



# राजपत्र, हिमाचल प्रदेश

## हिमाचल प्रदेश राज्य शासन द्वारा प्रकाशित

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शिमला, वीरवार, 23 जुलाई, 2009/1 श्रावण, 1931

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हिमाचल प्रदेश सरकार

**In the Court of Jagmohan Singh Mahantan, Presiding Judge, Industrial Tribunal-cum-Labour Court, Shimla**

Ref No. 226 of 2002

Instituted On 12-8-2002

Decided On. 25-2-2009

Rai Singh S/o Shri Relu Ram Village Shangoli, P.O Tharoli, Sub Tehsil Kupvi, Tehsil Chopal, District Shimla, H.P. ... *Petitioner*

*Versus*

1. The Executive Engineer, HPSEB, Division Charli Villa, Teshil & District Shimla, H.P.

2. The Sub Divisional Officer, HPSEB Sub Division Khalini Shimla-2

... Respondents.

*Reference under section 10 of the Industrial Disputes Act, 1947.*

For petitioner  
For respondent

Shri J.R Sharma, Ld. Csl.  
Shri Bhagwan Chand, Ld. Csl.

## AWARD

1. The following reference has been received by this Court from appropriate government for adjudication:—

**“Whether the termination of services of shri Rai Singh S/o Shri Relu Ram, ex-daily wages beldar by the Sub Divisional Officer, HPSEB Sub Division Khalini Shimla-2 w.e.f. November, 1994 without serving any notice is proper and justified? If not, what relief of service benefits, the above workman is entitled to?”**

2. The petitioner has filed a separate claim pleading therein that he was initially engaged as beldar on daily wages in the year 1994 with the respondent and that the petitioner worked at his place of posting for construction of HPSEB line till November, 1994 and then the services of the petitioner had been terminated in gross violation of well settled principles of law and that the petitioner made several requests and even visited the office of the SDO HPSEB Khalini time and again for his reengagement but to no avail and that the services of the petitioner had been terminated without following the proper procedure of law as well as the provisions of I.D Act, 1947 and that the petitioner has unblemished record of his service and never gave any opportunity of complaint during his employment, whose services have been orally terminated without complying the provisions of section 25-B, 25-F, 25-G and 25-H of the Act and that the respondents never charge sheeted the petitioner before the termination and that the respondents have failed to tender retrenchment compensation on account of service rendered by the petitioner and that the respondents recruited fresh hands and never offered employment of the petitioner and that the respondents are required to maintain the seniority of the workmen and as such prayed for reinstatement with retrospective effect alongwith all consequential benefits, hence this claim.

3. The respondents resisted and contested the claim of the petitioner, which filed reply interalia raising preliminary objections of time barred, estoppel and that there exists no enforceable cause of action in favour of the petitioner and against the respondents. On merits, it is contended that the petitioner had worked with the respondent w.e.f. 11-9-1994 to 25-9-1994 with breaks and that the petitioner was engaged as daily wages beldar against work providing L.T extension to proposed 100 KVA sub station Rajana at Ridkha, who left the job of his own on 25-9-1994 and since then the petitioner did not join with the respondents. It is denied that the petitioner had made several requests for his reengagement. The petitioner had worked for 14 days with the respondents and then he left the job of his own and that the respondents have not engaged junior to the petitioner and that the petitioner was not required to be served with notice since he had left the job of his own and as such prayed for the dismissal of the claim petition.

4. In the rejoinder, the petitioner controverted the assertions made in the reply and reaffirmed and reiterated the averments of the petition.

5. The following issues were framed by this Court on 19-5-2006 on the pleadings of the parties.

1. Whether the service of petitioner has been illegally terminated by respondent In November, 1994 without complying the provisions of I.D Act, 1947? If so, its effect? ... OPP.
2. If issue No.1 is proved in affirmative, to what relief of service benefits the petitioner is entitled to? ...OPP.
3. Whether the present petition is not maintainable and is barred by limitation? ...OPR.
4. Relief.

6. I have heard the Ld. Counsels for the parties and have also gone through the record of the case.

7. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under:—

Issue No.1                      ...                      No.

Issue No.2	...	Not entitled to any relief.
Issue No.3	...	No.
Relief	...	Reference answered in negative per operative part of award.

## REASONS FOR FINDINGS

*Issue No. 1 :*

8. Coming to issue No.1, the petitioner examined himself as PW-1, who has stated on oath that he had joined the employment of the respondents as daily wages beldar in Jan. 1994 in Electrical Sub Division, Khalini, who worked as such upto 30-11-1994 continuously and had completed service of 240 days and then he was retrenched on 30-11-1994 by an oral order, who was neither served with any notice nor was paid retrenchment compensation. Though he was retrenched, new persons were recruited. His request for reengagement was not granted despite the assurance that he would be called back to work as and when the muster roll was available and as such prayed for reinstatement in service alongwith all consequential benefits.

9. To rebut the case of the petitioner, the respondent examined Er. Rajesh Verma, who has stated that the petitioner was engaged as beldar on daily wages on 11-9-1994 and worked till 25-9-1994 for 14 days and proved the mandays chart of the petitioner Ex. RA and then the petitioner left the job of his own. No notice nor compensation was required to be paid to the petitioner as he has not completed 240 days in a calendar year and no junior to the petitioner was engaged by the respondent.

10. The case of the petitioner is that he was engaged by the respondent department as daily wages beldar, who was removed from service without notice or compensation, who has completed 240 days in a calendar year preceding to his termination as required under section 10 of the Industrial Disputes Act, 1947 and even junior to him are still working with the respondent department and as such he is entitled for his reengagement with seniority and continuity in service.

11. On the other hand, the respondent contends that the petitioner was not completed 240 days in any year, who left the job of his own without intimation to the respondent department and he is not entitled to any relief and moreover, no junior of petitioner was retained in service and as such, no notice or compensation was required to be given to the petitioner.

12. I have considered the respective contentions of both the parties and have scrutinized the record of the case.

13. After the close scrutiny of the record of the case, I am satisfied that the petitioner has not proved on record that he has completed 240 working days preceding his termination. Moreover, there is muster roll of the petitioner Ex. RA on record which shows that the petitioner has completed only 14 working days preceding his termination. Apart from it, there is nothing on record which could show that the junior to petitioner are still continuing with the respondent. It is significant to note that no record from the respondent was summoned in order to show that juniors to the petitioner and are still continuing with the respondent as beldars on daily wages. Their joining record has not been proved on record by the petitioner. It is well settled that where the workman has not produced any evidence to show that he had worked for more than 240 working days preceding his termination and that no evidence has been led in order to show that his juniors are still working with the respondent, the petitioner is not entitled to any protection under the provisions of the Industrial Disputes Act, 1947. Here I am fortified with a view taken by their lordship of Hon'ble Supreme Court in AIR

**2006 S.C. 110 case titled as Surindernagar District Panchyat V/s Dayabhai Amar Singh** in which it was held that:—

**“In case workman claims to have worked for more than 10 years as daily wager—Apart from oral evidence workman has not produced any evidence to prove fact that he has worked for 240 days---No proof of receipt of salary or wages or any record or order in that regard was produced: no coworker was examined; muster roll produced by employer has not been contradicted—Workman has failed to discharge his burden that he was in employment for 240 days during preceding 12 months of date of termination of his service—Workman not entitled for protection of Section 25-F before his service was terminated.”**

It is also the case of the petitioner that the respondent has violated the provisions of Rule 14 (ii) of Standing Orders of HPSEB as no ten days notice was given to him before his termination. It is abundantly clear that no notice for ten days was required to be served upon the petitioner before the termination of the petitioner as it was held by our own

High Court that no notice was required to be given to the petitioner by HPSEB even if the employment is below one year, as it was held in **Executive Engineer Joginder Nagar & Sanju S/O Sh. Gantu Ram, Vill Dalana, P.O. Ballhjoli, Tehsil. Jogindernagar, Distt. Mandi H.P. & Presiding Officer, Labour Court-Cum-Industrial Tribunal, Dharamsala in CWP No. 1383 of 2005** in which it was held that :—

**“The HP State Electricity Board shall be exempted from all the provisions of standing Orders Act, and thereafter no 10 days notice is required to be given under Standing Orders to the employee. Admittedly, the employees had not completed 240 days and the Tribunal could not have come to the rescue of the employee.”**

And as such, the petitioner is not entitled to any service benefits as he has failed to prove that he had worked for 240 days in a preceding year before his termination. Thus, having regard to the entire evidence on record, it can safely be concluded that the petitioner has not completed 240 working days preceding his termination nor his juniors are proved to be continuing in service after his removal and obviously, therefore, it can safely be concluded that the services of petitioner has not been terminated illegally by the respondent without complying the provisions of Industrial Disputes Act, 1947. Accordingly issue No.1 is decided in favour of respondent and against the petitioner.

*Issue No. 2 :*

14. Since I have held under issue no. 1 above, the services of petitioner has not been terminated illegally by the respondent under the provisions of Industrial Disputes Act, 1947 as well as under the provisions of rule 14 (ii) of Standing Order of HPSEB, hence the petitioner is not entitled to any claim of service benefits, hence issue no.2 is decided accordingly.

*Issue No. 3 :*

15. In support of this issue, no evidence was led by the respondents nor it was pressed during the course of arguments. However, I find nothing wrong with this petition which is perfectly maintainable. I have scrutinized the record of the case and observed that there is no limitation under the Industrial Disputes Act, 1947 as it was held by their lordship of Hon'ble Supreme Court reported in (1999) 6 SC 82 case titled as **Ajayab Singh Vs. Sirhind Co-operative Marketing-cum-processing Service Society Limited and Another**. In which it was held that:—

**“the provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”**

Accordingly, on the strength of this ruling, it can safely be concluded that there is no limitation under the Industrial Disputes Act, 1947, and as such issue is decided in negative.

#### RELIEF

As a sequel to my above discussion and findings on Issue No-1 to 3, the claim fails and is hereby dismissed and the reference is ordered to be answered accordingly. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open court today on this 25<sup>th</sup> day of Feb. 2009 in the presence of parties.

JAGMOHAN SINGH MAHANTAN,  
Presiding Judge,  
Labour court, Shimla.

**In the Court of Jagmohan Singh Mahantan, Presiding Judge, Industrial Tribunal-Cum-Labour Court, Shimla**

Ref No.	:	348 of 2002
Instituted On	:	28-10-2002
Decided On	:	24-2-2009

Amar Singh S/o Shri Ramu, R/o Village Bodhana, Tehsil Chopal, District Shimla, HP. Petitioner.

Versus

1. The Secretary HPSEB Vidyut Bhawan, State of HP Shimla-4.
2. The Executive Engineer, HPSEB, Theog Division District Shimla HP.
3. S.D.O Nerwa Sub Division, HPSEB, Tehsil Chopal, District Shimla, H.P. ...Respondent.

*Reference under section 10 of the Industrial Disputes Act, 1947.*

For petitioner : Shri M.S Kanwar, Ld. Csl.

For respondents : Shri Bhagwan Chand, Ld. Csl.

## AWARD

1. The following reference has been received from appropriate government by this Court for adjudication:—

**“Whether the termination of Shri Amar Singh s/o Shri Ramy ex-beldar from services by (i) The Executive Engineer, HPSEB, Division Chopal, District Shimla HP (ii) sub-Divisional Officer, HPSEB Sub Division Nerwa, District Shimla, HP w.e.f. 25-4-1998 is legal and justified? If not, to what relief the worker Shri Amar Singh is entitled to?”**

2. The petitioner has filed a claim asserting therein that he was initially engaged by the respondents during the year 1982 and continuously worked on daily wages basis till 1990 and then the services of the petitioner orally terminated without giving any notice and that the petitioner completed 240 days in the calendar year and that the petitioner being the workman is entitled to the protection of the provisions of Industrial Disputes Act and no notice and other benefits as required under section 25-F of the I.D Act was followed by the respondent and as such the termination of the petitioner is illegal and bad in the eyes of law and that against this termination, the petitioner requested the respondents to reengage him but in vain and that the respondents had engaged fresh persons S/Shri Kalam Singh and Murti Ram and the principle of first come last go was not followed by the respondent and that the respondents have not issued casual cards and muster roll to maintain the seniority of petitioner as required under the provisions of I.D Act and as such prayed for reengagement with all benefits, hence this claim.

3. The respondents resisted and contested the claim of the petitioner, which filed reply interalia raising preliminary objections of maintainability and there exists no cause of action in favour of the petitioner and against the respondents. On merits, it is denied that the petitioner was initially engaged by the respondents during the year 1982 and continuously worked on daily wages basis till 1990. It is also denied that the services of the petitioner were orally terminated by the respondents. The petitioner was engaged w.e.f. 5-4-1995 to 25-7-1995 and then the petitioner had worked with the respondents w.e.f. 5-5-1997 to 25-4-1998 with breaks, who had not completed 240 days in a preceding 12 months, who left the job wilfully w.e.f. 25-4-1998 and that the petitioner is not entitled to the protection of the provisions of the Industrial Disputes Act and the petitioner cannot claim the benefits of section 25-F of the Industrial Disputes Act and that the petitioner never visited the office of the respondents and that S/Shri Kalam Singh and Murat Singh had worked with the respondent on daily wages during the years 1982 to 1984 and 1985 to 1986 respectively and left the job of their own and that there was no need to issue the casual cards to maintain the seniority as the petitioner has not completed 240 days in a preceding 12 months and as such prayed for the dismissal of the claim.

4. In the rejoinder, the petitioner controverted the assertions made in the reply and reaffirmed and reiterated the averments of the petition. The following issues were framed by this Court on 28-3-2006.

1. Whether the services of the petitioner has been wrongly terminated without complying the provisions of section 25-F of the I.D Act, 1947? If so its effect? ...OPP.
2. If issue no.1 is proved in affirmative, to what relief of service benefits the petitioner is entitled to? ...OPP.
3. Whether the petition in the present form is not maintainable? ...OPR.
4. Relief.
5. I have heard the Ld. counsels for the parties and have gone through the record of the case.

6. For the reasons to be recorded hereinafter, while discussing the issues for determination, my findings on the aforesaid issues are as under.

Issue No. 1	:	No
Issue No. 2	:	Not entitled to any relief
Issue No. 3.	:	No
Relief	:	Reference answered in negative per operative part of the award.

#### REASONS FOR FINDINGS

##### *Issue No. 1 :*

7. Coming to issue no.1, the petitioner examined himself as PW-1, who has stated that he was engaged as beldar on muster roll basis during the year April, 1995 in Chopal Division for laying down the new LT & HT line and 10 to 12 workers were working with him at that time and some of the persons working with him are regularized by the respondents. S/Shri Ramesh and Giani Ram are still working with the respondent department. The respondents have given fictional breaks to him and not allowed to continue work, whose services were orally terminated *w.e.f.* April, 1998. No notice nor compensation has been paid to him prior to oral termination. Some of the persons engaged after him are still working with the respondents and the work is still available with the respondents and as such prayed for reengagement alongwith all benefits.

8. To rebut the case of the petitioner, the respondents examined Er. Hansraj, J.E HPSEB Nerwa Sub Division, who has stated that the petitioner was engaged as workman on daily wages on 5-4-1995 and continued as such till 25-7-1995 and then the petitioner was reengaged on 5-5-1997 to 25-4-1998 and then the petitioner abandoned the job of his own. The respondent never terminated the services of the petitioner and no junior to the petitioner was retained by the respondent and proved the mandays chart of the petitioner Ex. RA.

9. The case of the petitioner is that he being the daily waged workman has completed 240 working days in a calendar year preceding his termination without any notice or compensation is illegal and his juniors are still working with the respondents and as such he is entitled to be reinstated in service with seniority and continuity along with back wages.

10. On the contrary, the respondents contend that the petitioner has not completed 240 working days in any calendar year preceding his termination and his case does not fall under section 25-F of the Industrial Disputes Act, 1947 as the petitioner himself has abandoned the job and as such the petitioner is not entitled to any relief as prayed by him.

11. I have considered the respective contention of both the parties and have scrutinized the record of the case.

12. After the close scrutiny of the record of the case, I am satisfied that the petitioner has not proved on record that he has completed 240 working days preceding his termination. Moreover, there is mandays chart Ex. RA on record which shows that the petitioner has completed only 168 working days preceding his termination. Apart from it, there is nothing on record which could show that the juniors to petitioner are still continuing with the respondent. It is significant to note that no record from the respondent was summoned in order to show that the juniors to the petitioner are still continuing with the respondents as beldars on daily wages. It is well settled that where the workman has not produced any evidence to show that he had worked for more than 240 working days preceding his termination and that no evidence has been led in order to show that his juniors are still working with the respondent, the petitioner is not entitled to any protection under the provisions of the Industrial Disputes Act, 1947. Here I am fortified with a view taken by their lordship of Hon'ble Supreme Court in AIR 2006 S.C. 110 case titled as **Surindernagar District Panchyat V/s Dayabhai Amar Singh** in which it was held that:—

**“In case workman claims to have worked for more than 10 years as daily wager—Apart from oral evidence workman has not produced any evidence to prove fact that he has worked for 240 days---No proof of receipt of salary or wages or any record or order in that regard was produced: no coworker was examined; muster roll produced by employer has not been contradicted—Workman has failed to discharge his burden that he was in employment for 240 days during preceding 12 months of date of termination of his service—Workman not entitled for protection of Section 25-F before his service was terminated.”**

Thus, having regard to the entire evidence on record, it can safely be concluded that the petitioner has not completed 240 working days preceding his termination nor his juniors are proved to be continuing in service after his removal and obviously, therefore it can safely be concluded that the services of petitioner has not been wrongly terminated by the respondent without complying the provisions of Industrial Disputes Act, 1947. Accordingly issue no.1 is decided in favour of respondent and against the petitioner.

*Issue No. 2 :*

13. Since I have held under issue no. 1 above, the services of petitioner has not been wrongly terminated by the respondent under the provisions of Industrial Disputes Act, 1947, hence the petitioner is not entitled to any relief of service benefits, hence issue no.2 is decided accordingly.

*Issue No. 3 :*

14. In support of this issue, no evidence was led by the respondents nor it was pressed during the course of argument. However, I find nothing wrong with this petition which is perfectly maintainable, hence issue no.3 is decided in favour of the petitioner and against the respondent.

#### RELIEF

As a sequel to my above discussion and findings on Issue no.1 to 3, the claim fails and is hereby dismissed and the reference is ordered to be answered in negative. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open court today on this 24th day of Feb. 2009 in the presence of parties.

JAGMOHAN SINGH MAHANTAN,  
*Presiding Judge,  
Labour court, Shimla.*

**In the Court of Jagmohan Singh Mahantan, Presiding Judge, Industrial Tribunal-Cum-Labour Court, Shimla**

Ref No.	:	354 of 2002
Instituted On	:	20-10-2002
Decided On	:	25-7-2008

Sukh Dev S/o Shri Sita Ram, R/o Village Jati Majara, P.O Lodhimajra, Tehsil Nalagarh, district Solan, HP ...  
*Petitioner.*

*Versus*

M/s Ozone Pharmaceuticals Pvt. Ltd, Village Katha near Lakkar Depot Baddi, District Solan HP.  
... *Respondent.*

*Reference under section 10 of the Industrial Disputes Act, 1947.*

For petitioner	:	Shri Dinesh Banot, Ld. Csl.
For respondent	:	Shri Rajeev Sharma, Ld. Csl.

#### AWARD

1. The following reference has been received from appropriate government by this Court for adjudication:—

**“Whether the dismissal of the services of Shri Sukh Dev Singh S/o late Shri Sita Ram w.e.f 20.4.2001 on the basis of findings of enquiry by the Management of M/s Ozone Pharmaceuticals Ltd. , Village Katha near Lakkar Depot Baddi, District Solan HP is proper and justified? If not, to what relief in service benefits the above workman is entitled to?”**

2. The petitioner has filed a separate claim asserting therein that he was offered employment by the respondent as workman since 1998 and that the petitioner performed his duties to the entire satisfaction of the

respondent as workman since 1998 continuously without any complaint against him till his illegal retrenchment by the respondent on 20-6-2001 and that the respondent has terminated the services of the petitioner without assigning any reason and as such the termination of the petitioner is illegal and void abinitio and may be quashed as such and that the past record of the petitioner has been unblemished and for which he has been rewarded in such a manner by the respondent and that the services of the petitioner have been terminated without giving any show cause notice or even one month notice, hence the termination of the petitioner is illegal in the absence of any notice which deserves to be quashed and set aside and he may be ordered to be reinstated with all consequential benefits, hence this claim.

3. The respondent resisted and contested the claim of the petitioner which filed reply inter-alia raising preliminary objections that the claim is not maintainable in the present form which is not a legal reference as the same has not been made to this court by the competent authority and the petitioner has not come to the court with clean hands who has disguised the material facts from this court and the petitioner is gainfully employed who was earning more than the amount which was earning from the respondent management and the petitioner having agricultural land in the area of Tehsil Nalagarh District Solan who was earning more money from this piece of land and the petitioner is working with M/s Golden Eagle Security Services SCO 2475-76 Sector 22-C Chandigarh and the present PF account of the petitioner is PB/CH-14802/2070 and that the petitioner indulged in grave mis-conduct during the course of his employment with the respondent management and the respondent management held an independent enquiry about the misconduct of the petitioner as per the principle of natural justice in a lawful manner. On merits, it is contended that the petitioner was appointed as helper with the industrial unit of respondent company w.e.f. 1.10.1999 and the health of the petitioner was not good who used to take leave from the factory time and again and the respondent company advised the petitioner to take the better medicines but of no use. Finally the petitioner was found to be suffering from tuber culosis (TB) and the respondent advised the petitioner to take regular medicine and only to resume duties if having medical fitness certificate from competent Doctor and even the respondent paid the money to the petitioner to get himself checked up from T.B hospital Dharampur, District Solan HP but the petitioner did not bother for the same and when the petitioner was asked by the accountant to give detail of the money which was given to him, the petitioner misbehaved with the accountant and when Senior Officer Shri Yogesh Sharma called the petitioner, he again misbehaved with him and then the matter was reported to overall Incharge of the factory Ms. Anupama Verma, Works Manager of the factory, the petitioner also misbehaved with her in the presence of the subordinate officers and workers of the company and as such the respondent management charge sheeted the petitioner on account of grave misconduct and the petitioner was called upon to file reply of the same, who failed to file a satisfactory reply to the charges levelled by the respondent management and then an independent enquiry was held against the petitioner and Shri Sanjeev Bajaj was appointed as enquiry officer, who held the enquiry but the petitioner chose to remain away from the enquiry proceedings and due to the grave misconduct of the petitioner, the respondent management suffered financial losses and also the morale of the officers and security guard lowered down and that the respondent terminated the services of the petitioner as per the provisions of Industrial Disputes Act, 1947 and the petitioner misbehaved with his superiors officers and the security guards, who had to take work from the petitioner and the others and the petitioner caused financial losses to the company property.

4. In the rejoinder, the petitioner controverted the assertions made in the reply and reaffirmed and reiterated the averments of the petition.

5. The followings issues were framed by this Court on 17-11-2005 on the pleadings of the parties.

1. Whether the services of Shri Sukh Dev Singh has been illegally terminated by the respondent? If so its effect? ...OPP.
2. If issue No.1 is proved in affirmative to what relief the petitioner is entitled to? ...OPP.
3. Whether the present petition is not maintainable? ...OPR.
4. Whether the petitioner is gainfully employed? If so, its effect? ...OPR.
5. Relief.

6. I have heard the Learned Counsels for the parties and have also gone through the record of the case.

7. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings on the aforesaid issues are as under:—

Issue No.1	No.
Issue No.2	No.



Issue No.3

No.

Issue No.4

Yes.

Relief. Reference answered in negative per operative part of the award.

## REASONS FOR FINDINGS

*Issue No.1 :*

8. In order to prove this issue, the petitioner has examined two PWs in all. The petitioner has examined himself as PW-1 who has stated that he was posted as helper with store keeper in the respondent company in September, 1998. He was getting Rs. 1700/- PM. ESI contribution was also deducted from his salary. He was having good relations with the management and having no dispute earlier. The management has issued him a charge sheet and the reply was given to the management by him vide letter mark X and the management made him the payment on 2-4-2001 for the period he had worked in the factory and on the next date when he had gone for work, the gate was found closed and the security personnel were present. He received one letter through post office about his termination from service. He replied the letter and also met the Labour Inspector but nothing has been done. The union was formed in the factory on 15-3-2001 and he became the President of the union. Presently he is working in Golden Eagle Security Services for the last two years. He had given an application for his reinstatement as per Ex. PA and no enquiry was conducted by the management against him even no notice was given to him regarding his retrenchment.

9. PW-2 Joginder singh has stated that he was earlier working in the respondent factory from August, 1998 to 2-4-2001. The petitioner also worked with him and having good relations with the management and was a good worker and no quarrel has taken place between the petitioner and the management. The union was formed in the factory on 15-3-2001 and he was the General Secretary of the union. The respondent company removed 22 workers on 3-4-2001 and the gate of the factory was closed illegally.

10. To rebut the case of the petitioner, the respondent has examined three RWs in all. RW-1 Ms. Anupama Verma, G.M of the respondent company has stated that she was posted as works manager in 2001. The petitioner was worker in the factory. They are manufacturing medicines. The petitioner was suffering from T.B who was referred for medical checkup for T.B treatment to Dharampur but the petitioner has not furnished the medical certificate and misbehaved with Mr. Tripathi and Mr. Yogesh Sharma Production Manager. She called the petitioner for hearing but the petitioner misbehaved with her and also left the factory premises after opening the gate and then the petitioner was served with a charge sheet Ex. R-5 and also held the enquiry and appointed Mr. Sanjeev Bajaj as an enquiry officer per Ex. RA and the management served second show cause notice Ex. RB to the petitioner but has the petitioner has not reported for duties and thereafter, his services were terminated as per order R-7 and the petitioner is working in Golden Eagle Services and presently working in Morepen Baddi and it is impossible to take the work from the petitioner who is in the habit of misbehaving with his superiors and the petitioner is not sincere in his work and even failed to submit his medical fitness certificate who has taken Rs. 200/- for his medical checkup but failed to give the receipt of the expenditures.

11. RW-2 Shri S. K Tripathi, Accounts Manager of respondent company has stated on oath that the was posted as Personnel Officer in 2001. He knows the petitioner who was working in the company, who was suffering from TB. He issued letter Ex. RC to the petitioner for his medical checkup and also paid Rs. 200/- for his expenses vide cash voucher Ex. RD. He asked the petitioner for the details of expenditure for which he refused to give any detail and told him to do whatever he wanted to do. He submitted written complaint Ex. RA to the Works Manager and the petitioner was charge sheeted and enquiry was held. His statement Ex. RX was recorded during enquiry. The behavior of the petitioner was not found good who misbehaved with Production Manager, Works Manager and other officers and Security Guard of the company, who left the factory premises at his own. He came to know that petitioner is presently working in Morepen Baddi and is unable to take the work from petitioner because of his misbehavior, who is in the habit of misbehaving with everybody.

12. RW-3 Shri Yogesh Sharma, Production Manager has stated that he is working as G.M with the respondent company and has been working in this factory since 1989. He knows the petitioner, who was helper. The petitioner was not feeling well, who was advised for medical checkup and on medical examination he was found to have been suffering from T.B. The petitioner was deputed to Dharampur for medicine after paying him expenses through voucher. He asked the petitioner to work outside the unit but he refused to comply with his direction. He asked to render the accounts of the payment made to the petitioner by Ex. RD but instead of submitting the accounts, he misbehaved with Mr. Tripathi (Accountant), who reported the matter to Ms. Anupama Verma about his misbehavior and the petitioner even misbehaved with Ms. Verma in his presence. The petitioner opened the door and left the room in indecent manner and went out of the factory gate. The petitioner was on duty on the date of incident. The petitioner was charge sheeted for misbehaving and necessary enquiry was conducted by Mr. Bajaj. His statement was also recorded by the enquiry officer which is Ex. RW-3/A. The petitioner was not participated in the enquiry despite notice who has been removed from service on the basis of the enquiry.

13. The case of the petitioner is that he was retrenched from service without any notice, charge sheet or amount of compensation and as such his termination is illegal who may be reinstated with all consequential benefits including back wages.

14. On the contrary, the respondent contends that the petitioner is in the habit of misbehaving with his superiors who was suffering from T.B and was given a sum of Rs. 200/- for his medical expenses and medical checkup at T.B Hospital Dharampur who did not render any account to Shri Tripathi, Accountant and when the petitioner was asked for the accounts, he misbehaved with Shri Tripathi Accountant, Shri Yogesh Sharma, Production Manager and Ms. Anupama Verma Works Manager and the petitioner was called upon through explanation to explain his conduct and after finding gross misconduct, a regular enquiry was held against him who did not participate in the enquiry and Shri Sanjeev bajaj was appointed as an enquiry officer in this case, who submitted his enquiry report and found the petitioner guilty and then the services of the petitioner was terminated on the basis of enquiry report. It is also the case of the respondent that the petitioner is gainfully employed who earlier worked with Golden Eagle Security Chandigarh and now working with M/s Morepen Ltd Baddi.

15. I have heard the respective contentions of both the parties and have gone through the record of the case.

16. After the close scrutiny of the record of the case and the deposition of PW-1, it is clear that the petitioner has admitted in his cross examination that he was having T.B problem and he was paid a sum of Rs. 200/- by the respondent for medical expenses and to get his medical fitness certificate. The petitioner has also admitted that he did not give medical fitness certificate from T.B hospital Dharampur and instead he gave the certificate issued by Medical Officer Nalagarh. It is significant to note that T.B Hospital Dharampur is specially meant for T.B patients and the petitioner was asked to produce the medical certificate from Dharampur, who failed to produce the same and further failed to render the medical expenses of Rs. 200/- which was given to him by the respondent and when Mr. Tripathi Accountant, has asked the petitioner for the receipt of medical expenditure, the petitioner misbehaved with him and further when Shri Yogesh Sharma, Production Manager asked from the petitioner about his medical fitness certificate he also misbehaved with him and when he was taken to the Works Manager Ms. Anupama Verma, he also misbehaved with her and as such it is clear that the petitioner also misbehaved with all his superiors i.e Mr. Tripathi, the then Accountant, RW-2 Yogesh Sharma, the then Production Manager and now G.M of the company RW-3 Ms. Anupama Verma, the then Works Manager who have voiced on oath that the petitioner had mis behaved with them when they asked for medical fitness certificate and to give true accounts of Rs. 200/- which was given to him for his treatment.

17. It is borne out from the record that enquiry was held against the petitioner who was charge sheeted on account of grave misconduct who did not participate in the enquiry for the reasons best known to him and proceeded against ex-parte. The petitioner has not challenged the enquiry report nor levelled any allegations against the Enquiry Officer Shri Sanjeev Bajaj, who found the petitioner guilty. The Enquiry Officer has submitted his enquiry report Ex. RA placed on record which shows that the petitioner has willfully and intentionally absented from the enquiry proceedings who was proceeded against ex-parte and on the basis of ex-parte evidence placed on record, the enquiry officer held the petitioner guilty for which he was terminated from service. I have scrutinized the enquiry report and found nothing wrong with it and there is no reason to disbelieve the enquiry report. It is also proved on record that the petitioner is working with Golden Eagle Security Services Chandiragh since 17-8-2002 as is evident from the certificate Ex. RA. It is also significant to note that the petitioner has admitted that he has received the dismissal order from the respondent company Ex. R-7.

18. Now, adverting to the legal aspect of the case, it is clear that the petitioner was dismissed from service on grave misconduct of misbehavior with his superiors and for not rendering the true accounts of Rs. 200/- which was given to him for medical expenses. The petitioner himself has admitted about the receipt of Rs. 200/- from Mr. Tripathi, Accountant of the respondent company who failed to produce the medical certificate from T.B hospital Dharampur, District Solan HP and even mis behaved with his superiors when he was asked to furnish medical certificate and to render true account of the same. It was held by their lord ships of Hon'ble Supreme Court in case titled as Indian Oil Corporation Ltd. Vs. Ashok Kumar Arora as reported in 1997 LLR 335. In which it was held that:—

**“There is neither any discrimination restored to by the Disciplinary Authority nor the punishment awarded to the respondent was disproportionate to his misconduct. The impugned judgment and order of High Court, therefore, are unsustainable and the allegations of the respondent that he was denied the reasonable opportunity by the Enquiry Officer has no merit since he was unable to illustrate in what manner he was denied a reasonable opportunity.”**

It was further held in 1997 LLR369 Allahabad High Court in case titled as M.C Gupta Vs. Labour Court at Meerut and Another. In which it was held that:—

**“Whether abusive language by a workman can be a good ground for dismissal.”**

And it was further held that :—

**“In this case the punishment of dismissal was called for, otherwise discipline cannot be maintained in the organization.”**

19. Thus, having regard to entire evidence on record it can safely be concluded that the services of Sukh Dev has not been illegally terminated by the respondent who was rightly chargesheeted by the respondent company in accordance with law and the petitioner himself did not join the enquiry proceedings who was found guilty and consequently dismissed from service and therefore, it does not lie in the mouth of the petitioner to say that he has been illegally terminated by the respondent company especially when he was rightly dismissed from service by the respondent, hence issue No-1 is decided in favour of the respondent and against the petitioner.

*Issue No. 2 :*

20. Since I have held under issue No.1 above, that the petitioner was rightly dismissed from service by the respondent who was not illegally terminated by the respondent, hence the petitioner is not entitled to any relief as claimed by him. Accordingly this issue is answered against the petitioner and in favour of respondent.

*Issue No.3 :*

21. In support of this issue, no evidence was led by the respondent nor it was pressed during the course of arguments. However, I find nothing wrong with this petition which is perfectly maintainable in the present form, hence this issue is decided in favour of the petitioner and against the respondent.

*Issue No. 4 :*

22. In support of this issue, the respondent has proved on record that the petitioner is gainfully employed since 17-8-2002 as is evident from certificate Ex. RA issued by Golden Eagle Services Chandigarh which is not disputed by the petitioner and therefore, I have no hesitation in coming to the conclusion that the petitioner is gainfully employed since 17-8-2002. Accordingly, this issue is decided in favour of the respondent and against the petitioner.

#### RELIEF

As a sequel to my above discussion and findings on issue No. 1 to 4 the claim of the petitioner fails and is hereby dismissed and the reference is ordered to be answered accordingly. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open court today on this 25th day of July, 2008 in the presence of parties.

JAGMOHAN SINGH MAHANTAN,  
*Presiding Judge,  
Labour court, Shimla.*

Ref. 27/2007  
19-2-2009

Present : None for the petitioner.  
Shri Sandeep Dutta, Ld. Csl for respondent.

Be awaited. It is 11.15AM.

Sd/-  
*Presiding Judge,  
Labour Court, Shimla.*

19-2-2009

Present 5 : None for the petitioner.  
Shri Sandeep Dutta, Ld. Csl for respondent.

Case called in the pre and post lunch sessions, but none has appeared on behalf of the petitioner. It seems that the petitioner is not interested to pursue the case. Accordingly, the claim of the petitioner is dismissed and the reference is answered accordingly. Let a copy of this order be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced :

Sd/-  
Presiding Judge  
Labour Court, Shimla.

**In the Court of Jagmohan Singh Mahantan, Presiding Judge, Industrial Tribunal-Cum-Labour Court, Shimla**

Ref No.	:	38 of 2006
Instituted On	:	7-4-2006
Decided On	:	26-2-2009

Parkash Chand Sharma, S/o Shri Panchhai Ram R/o House No. 1090/3, Near Railway Rest House, Bharat Nagar, Kalta (Haryana) ...Petitioner.

*Versus*

1. The Managing Director, Micro Turner, Village Nariyal, Sector-IV, Parwanoo, H.P. ...Respondent.

*Reference under section 10 of the Industrial Disputes Act, 1947.*

For petitioner : Shri Niranjana Verma, Ld. Csl.

For respondent : Ms. Veena Sood, Ld. Csl.

**AWARD**

1. The following reference has been received for adjudication by this Court from the appropriate government:—

**“Whether the termination of services of Shri Parkash Chand S/o Shri Panchi Ram workman by the Managing Director, M/s Micro Turner, Village Nariyal, Sector-IV Parwanoo, District Solan HP w.e.f. 28-1-2004 without complying the provisions of Industrial Disputes Act, 1947, is proper and justified? If not, to what relief of service benefits and amount of compensation, the above aggrieved workman is entitled to?”**

2. The petitioner has filed a separate claim asserting therein that he was appointed by the respondent as a setter worker w.e.f March, 2002, who worked till 28-1-2004 to the entire satisfaction of the respondent and that on 28.1.2004, the service of the petitioner was terminated without any notice under section 25-F of the ID Act, 1947 and that the work being performed by the petitioner was of permanent nature and the respondent retained the fresh hands in service and that otherwise also the dispensing with the services of the petitioner involved civil consequences and as such the same could not have been resorted to without the petitioner being put to notice and hearing in the matter before terminating his service which amounts to retrenchment and as such prayed for reinstatement with all consequential benefits, hence this claim.

3. The respondent resisted and contested the claim of the petitioner, which filed reply inter alia raising preliminary objections of maintainability, there is no relationship of employee and employer between the petitioner and the respondent and that the petitioner is gainfully employed and that the petitioner is barred by limitation. On merits, it is contended that the petitioner was never the workman of M/S Micro Turner Parwanoo and there is no employee and employer relationship between the petitioner and the respondent and that there has been no violation of the provisions of ID Act, 1947 and no compensation is payable to the petitioner as the petitioner was never workman at any point of time of the respondent and that the service of the petitioner were never dispensed with as he was never a worker of respondent and that the petitioner is gainfully employed and employee of some other company, who is not entitled to any relief and as such prayed for the dismissal of the claim petition.

4. In the rejoinder, the petitioner controverted the assertion made in the reply and reaffirmed and reiterated the averments of the petition. The following issues were framed by this Court 5-3-2006.

1. Whether the services of the petitioner has been illegally terminated by the respondent without complying with the provisions of Industrial Disputes Act, 1947? If so its effect? ...OPP.
2. If issue no.1 is proved in affirmative, to relief the petitioner is entitled to? ...OPP.
3. Whether present petition is not maintainable and there is no relationship of employee and employer between the parties? ...OPR.
4. Whether the claim is barred by limitation? ...OPR.
5. Relief.

5. I have heard the Ld. Counsels for the parties and have also gone through the record of the case.

6. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings on the aforesaid issues are as under:—

Issue No.1	:	No.
Issue No. 2	:	Not entitled to any relief.
Issue No.3	:	Yes.
Issue No. 4	:	No.
Relief	:	Reference answered in negative per operative part of award.

#### REASONS FOR FINDINGS

*Issue No. 1 :*

7. Coming to issue No. 1, the petitioner has examined himself as PW-1, who has stated that he was engaged as Setter in March, 2002 and worked till 28.1.2004, whose last drawn salary was Rs. 4155/- and the certificate is Ex. PW-1/A and his identity card is Ex. P-2. No notice nor compensation has been paid to him at the time of his removal. One Pardeep Kumar was engaged after his removal and his junior Mast Ram has been promoted as Mistry and his work was satisfactory during his stay and as such prayed for all service benefits.

8. On the contrary, the respondent has examined Shri Anand Verma (Accountant), who has stated that there is no name of the petitioner mentioned in the attendance register from 2002 onwards till date and the respondent is covered under ESI Act and has brought the entire record of ESI but no name of the petitioner is found therein and the petitioner never remained the employee of the respondent and proved his authorization Ex. RA to make the statement.

9. The case of the petitioner is that he was engaged as Setter by the respondent company, who was terminated from service without serving any notice nor paid retrenchment compensation and even his junior was retained by the respondent, who are still continuing with the respondent company and as such his services is liable to be reengaged alongwith all benefits.

10. On the contrary, the respondent contends that the petitioner was never engaged by the respondent at any point of time and there is no relationship of employee and employer between the petitioner and the respondent and even the respondent company is covered under ESI Act but there is no name of the petitioner found in ESI record and as such the petitioner is not entitled to any relief as prayed by him being never the workman of the respondent.

11. I have considered the respective contention of both the parties and have scrutinized the record of the case.

12. After the close scrutiny of the record of the case, it remains a fact that the respondent has never owned that the petitioner was the workman of respondent at any point of time and even the identity card and pay slip do not have the signature and stamp of the authorized signatory of the respondent company. Apart from it, the petitioner has not summoned the record of the company in order to show that he had worked as a setter with the respondent at any point of time and had completed 240 working days in a calendar year preceding his termination and also to prove that his juniors are still continuing with the respondent. In view of no evidence on record and not even his coworker to support his case, it can safely be concluded that the petitioner has miserably failed to prove on record that he was ever

the workman being the setter of the respondent, who was illegally terminated by the respondent without complying with the provisions of the I.D Act, 1947. Here I am fortified with a view taken by the Hon'ble Supreme Court in AIR 2006 S.C. 110 case titled as **Surindernagar District Panchyat V/s Dayabhai Amar Singh** in which it was held that:—

**“In case workman claims to have worked for more than 10 years as daily wager—Apart from oral evidence workman has not produced any evidence to prove fact that he has worked for 240 days---No proof of receipt of salary or wages or any record or order in that regard was produced: no coworker was examined; muster roll produced by employer has not been contradicted—Workman has failed to discharge his burden that he was in employment for 240 days during preceding 12 months of date of termination of his service—Workman not entitled for protection of Section 25-F before his service was terminated.”**

Thus, on the strength of above cited judgment of Hon'ble Supreme Court and having regard to the fact that the petitioner has miserably failed to prove his case that he was ever workman of the respondent company and was illegally terminated by the respondent without complying with section 25-F of the I.D Act, 1947. Accordingly the issue is decided in favour of respondent and against the petitioner.

*Issue No. 2 :*

13. Since I have held under issue no.1 above that the services of the petitioner have not been illegally terminated by respondent without following the provisions of industrial Disputes Act, 1947, hence the petitioner is not entitled to any relief as prayed by him. Accordingly, issue no.2 is decided in favour of respondent and against the petitioner.

*Issue No .3 :*

14. In support of this issue, the respondent has proved on record by examining RW-1 Shri Anand Sharma, Accountant of the respondent, who has testified that the name of the petitioner does not find figure in the ESI record brought by him and the petitioner never remained the employee of the respondent as per the record of the respondent brought by him and therefore, it stands proved on record that there exists no relationship of employer and workman at any point of time and accordingly the claim is not maintainable being no relationship of employer and employee and as such issue is decided in favour of respondent and against the petitioner.

*Issue No. 4 :*

15. In support of this issue, no evidence was led by the respondent being the legal issue. However I have scrutinized the record of the case and observed that there is no limitation under the I.D Act as it was held by their lordship of Hon'ble Supreme Court reported in (1999) 6 SC 82 case titled as **Ajayab Singh Vs. Sirhind Co-operative Marketing-cum- processing Service Society Limited and Another** in which it was held that:—

**“the provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”**

Accordingly, on the strength of this ruling, it can safely be concluded that this petition is not barred by limitation. Accordingly, Issue No.4 is decided in favour of petitioner and against the respondent.

#### RELIEF

As a sequel to above discussion and findings on issues No.1 to 4, the claim fails and is hereby dismissed and the reference is ordered to be answered in negative. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open court today on this 26<sup>th</sup> day of Feb. 2009 in the presence of parties.

JAGMOHAN SINGH MAHANTAN,  
Presiding Judge,  
Labour court, Shimla.

**In the Court of Jagmohan Singh Mahantan, Presiding Judge, Industrial Tribunal-Cum-Labour Court, Shimla**

Ref No. : 183 of 2003  
 Instituted On : 10-6-2003  
 Decided On : 22-2-2009

Dila Ram, S/o Shri Malak Ramgun R/o V&PO Tunan, Teshil Nirmand District Kullu, HP.

... Petitioner.

*Versus*

Regional Manager, HRTC, Rampur, District Shimla, HP.

...Respondent.

*Reference under section 10 of the Industrial Disputes Act, 1947.*

For petitioner : Shri M.L Sharma, Ld. Csl.  
 For respondent : Shri Rajesh Verma, Ld. Csl.

### AWARD

1. The following reference has been received from appropriate government by this court for adjudication:

2. The petitioner has filed a separate claim asserting therein that he was initially engaged as helper Tyreman by respondent in 4th September, 1997 on remuneration of Rs. 1500/- per month and the respondent asked the petitioner in the month of November, 1997 to execute a contract with the respondent for serving for 89 days and as such the contract was signed and executed between the petitioner and respondent on 7th November, 1997 and after the expiry of contract, the petitioner was again engaged for 89 days by the respondent which process continued till 17-4-2001 and then the services of the petitioner were orally terminated by the respondent and that the respondent has though given notional breaks of one or two days after the expiry of 89 days and during this period, the petitioner has completed 240 days in each calendar year and that against the termination of the petitioner, he filed an O.A which was decided on the ground of jurisdiction and that the oral termination of the petitioner w.e.f. 27-4-2001 by the respondent is wrong, illegal, arbitrary and against the facts and material on record and is also against the provisions of Industrial Disputes Act, 1947 and as such prayed for reinstatement in service with continuity, seniority and regularization in service, hence this claim.

3. The respondent resisted and contested the claim of petitioner, which filed reply interalia raising preliminary objections of maintainability and that the petitioner was employed on contract basis. On merits, it is contended that the petitioner was engaged as helper tyreman on contract basis for a period of 89 days w.e.f. 4-9-1997 for a monthly remuneration of Rs. 1500/- and the contract was signed and executed between the petitioner and the respondent and the contract was again renewed from time to time for 89 days till 17-4-2001 and then the services of the petitioner were dispensed with on the basis of the conditions of the contract and that the petitioner used to be engaged by the respondent for a specific period of 89 days as and when his services were required by the respondent and that the petitioner has not completed 240 days in any calendar year nor in the preceding 12 calendar month as envisaged under section 25-F of the Industrial Disputes Act, 1947 and that the disengagement of the petitioner was purely on the basis of the conditions of the contract executed by the petitioner with the respondent, who was disengaged on the basis of terms and conditions of his contract and that the respondent has got no work and funds and is running in huge losses and is finding difficult even to pay the salaries of its regular employees and that the petitioner was engaged on the basis of contract, hence the provisions of Industrial Disputes Act, 1947 are not applicable to him and as such prayed for the dismissal of claim petition.

4. In the rejoinder, the petitioner controverted the assertions made in the reply and reaffirmed and reiterated the averments of the petition.

5. The following issues were framed by this Court on 21-12-2005.

1. Whether the services of the petitioner has been illegally terminated by the respondent? If so, its effect? ...OPP.
2. If issue no.1 is proved in affirmative, to what relief of service benefits the petitioner is entitled to? ...OPP.
3. Whether the present petition is not maintainable? ...OPR.
4. Relief.

6. I have heard the learned counsels for the parties and have gone through the record of the case.

7. For the reasons to be recorded hereinafter while discussing issues for determination my findings on the aforesaid issues area as under.

Issue No. 1	:	Yes.
Issue No.2	:	Entitled for reinstatement in service alongwith seniority and continuity but without back wages.
Issue No.3	:	No.
Relief :		Reference answered in affirmative per operative part of award.

#### REASONS FOR FINDINGS

##### *Issue No.1 :*

8. Coming to issue no.1, the petitioner has examined two PWs in all. Petitioner Shri Dila Ram appeared into witness box as PW-1, who has stated on oath that he was working in HRTC since 4-9-1997 as helper and worked till May, 2001 and his services were terminated without notice and compensation. He had completed more than 240 days in every calendar year but the respondent was giving him one day break after 89 days, who used to work full day and these days he is doing agriculture work at his village and as such prayed for reinstatement.

9. PW-2 Shri Parveen Sharma, Junior Assistant HRTC Rampur has stated that the petitioner was engaged as helper at Rampur with the respondent on 4-9-1997, who worked as such till April 2001 and proved the mandays chart of the petitioner Ex. PA.

10. To rebut the case of the petitioner, the respondent examined Shri Raghuvir Singh, R.M HRTC Rampur, who has stated that the petitioner was engaged as tyreman helper with the respondent from 4th September, 1997 for 89 days, who worked till 19--2001 after repeating 89 days from time to time and proved the contract Ex. RA to Ex. RD. The petitioner has not completed 240 days in a calendar year preceding his termination.

11. The case of the petitioner is that he being a helper tyreman having worked for more than 240 days and his termination without notice and compensation is illegal and as such he is entitled for the protection of section 25-F of the Industrial disputes Act, 1947.

12. On the contrary, the respondent contends that the petitioner is not entitled to any benefits under the Industrial Disputes Act, 1947 as he was engaged on contract basis for 89 days only and the contract was repeated from time to time for 89 days and even the petitioner has not completed 240 working days in any calendar year before his termination.

13. I have considered the respective contention of both the parties and have scrutinized the record of the case.

14. After the close scrutiny of the record of the case, there is no dispute about the appointment of the petitioner as tyreman, who was appointed as tyreman by the respondent on 4.9.1997 and worked till 2001 with fictional breaks. The petitioner was appointed as tyreman on contract basis for 89 days which was renewed from time to time as is evident from Ex. RA to RD placed on record who worked for 354 days *w.e.f.* 4/2000 to 3/2001 as is evident from the detail of salary slip Ex. PA placed on record. Moreover, the petitioner has completed 240 working days in a calendar year and his termination without notice or retrenchment compensation is illegal. Here I am fortified with a view taken by their lordship of **Hon'ble Supreme Court as reported in Haryana State Electronics Development Corporation Limited Vs Mamnl, (2006) 9 SCC 434**. that appointment for a short period (89 days) and termination of services at the end of the said period and reappointment after a gap of one day, such action of termination and reappointment repeated again and again for a period of about one year and a half year, in such circumstances, the Hon'ble Supreme Court has held the termination not bonafide but adopted to defeat the object of the Act. Thus it is not covered by section 2(oo) (bb) of the Industrial Disputes Act, 1947. Their lordships of the Hon'ble Supreme Court has held as under:—

**“Section 2(oo) (bb) of the Industrial Disputes Act reads as under :**

**“2. (oo) (bb) termination of the services of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry of such contract being terminated under a stipulation in that behalf contained therein.”**

**“...It is not possible for us to accept the aforesaid plea raised at the hands of the management on account of the fact that the factual position, which has not been disputed, reveals that the respondent**



workman was repeatedly working on 89 days basis. It is, therefore, clear that the intention of the management was not to engage the respondent workman for a specified period, as alleged, but was to defeat the rights available to her under section 25-F of the Act. The aforesaid practice at the hands of the petitioner management to employ the workman repeatedly after notional break clearly falls within the ambit and scope of unfair labour practice.”

Similarly our own Hon’ble High Court in case **shri Manoj Kumar sharma Vs. HRTC & Another in CWP No. 39 of 06 dated 28.5.2007** has held that the intention of the management was not to engage the respondent workman for a specified period was to defeat the rights of a workman under section 25-F of the Act as in that case also the petitioner was initially appointed for 89 days and after giving him fictional breaks, reappointed for another 89 days followed by one year appointment. The practice has been adopted by the management of HRTC to defeat the provisions of section 25-F of the Industrial Disputes Act, 1947 which amounts to unfair labour practice. In the instant case also the petitioner was initially appointed for 89 days and after giving him fictional break, reappointment for another 89 days followed by others appointments for 89 days as is evident from Ex. RA to RD. It is fully proved on record that even after giving fictional breaks, the petitioner has completed 354 days in the year 2000-01 as is evident from Ex. PA placed on record. This practice of fictional breaks has been adopted by the respondent to defeat the provisions of section 25-F of the Industrial Disputes Act, 1947. Thus, having regard to the entire evidence on record and in view of the fact that the petitioner has completed 254 working days before his termination was affected and his termination without notice under section 25-F of Industrial Disputes Act, 1947 is illegal. Accordingly issue no.1 is decided in favour of the petitioner and against the respondent.

*Issue No. 2 :*

15. Since I have held under issue no.1 above, that the services of the petitioner has been illegally terminated by the respondent without notice or payment of compensation, hence the petitioner is held entitled to reinstatement in service with seniority and continuity from the date of illegal retrenchment. However, the petitioner is not entitled to back wages as he has not placed any material on record to substantiate that he was not gainfully employed after his retrenchment. Accordingly, issue no.2 is decided in favour of petitioner and against the respondent.

*Issue No. 3 :*

16. In order to prove this issue, no evidence was led by the respondent nor it was pressed during the course of arguments. However I find nothing wrong with this claim of the petitioner which is perfectly maintainable in the present form. Accordingly, issue no.3 is decided in favour of petitioner and against the respondent.

#### RELIEF

As a sequel to my above discussion and findings on issue no.1 to 3, the claim of the petitioner succeeds and is hereby allowed and as such the reference is answered in affirmative and the petitioner is ordered to be reinstated in service forthwith with seniority and continuity in service. However, the petitioner is not entitled to back wages as he has not placed any material on record to substantiate that he was not gainfully employed after his termination. Let a copy of this award be sent to the appropriate government of publication in official gazette. File, after completion, be consigned to records.

Announced in the open court today on this 25th Day of Feb. 2009 in the presence of parties.

JAGMOHAN SINGH MAHANTAN,  
*Presiding Judge,*  
*Labour court, Shimla.*

**In the Court of Jagmohan Singh Mahantan, Presiding Judge, Industrial Tribunal-Cum-Labour Court, Shimla**

Ref No.	:	184 of 2003
Instituted On	:	20-6-2003
Decided On	:	25-2-2009

Surinder Kumar, R/o PWD Rest House Rampur, Tehsil Rampur, District Shimla, H.P.

*...Petitioner.*

*Versus*

Regional Manager, HRTC, Rampur, District Shimla, HP

*...Respondent.*

*Reference under section 10 of the Industrial Disputes Act, 1947.*

For petitioner : Shri M.L Sharma, Ld. Csl.

For respondent: Shri Rajesh Verma, Ld. Csl.

#### AWARD

1. The following reference has been received from appropriate government by this court for adjudication:
2. The petitioner has filed a separate claim asserting therein that he was initially engaged as part time sweeper by respondent in the year 1993 on a fixed salary of Rs.600/- per month and the salary was increased to Rs. 800/- per month in the year 1994, which was further revised to Rs. 1000/- per month in the year 1997 and to Rs. 2000/- per month w.e.f. July 1999 and that the petitioner was continuously working with the respondent without any break to the entire satisfaction of his superiors and that the petitioner is an illiterate person and was under the impression that his services would be regularized by the respondent as sweeper as he has completed 240 days in each calendar year and that against the termination of the petitioner, he filed an O.A which was decided on the ground of jurisdiction and that the oral termination of the petitioner w.e.f. 2-5-2001 by the respondent is wrong, illegal, arbitrary and against the facts and material on record and is also against the provisions of Industrial Disputes Act, 1947 and as such prayed for reinstatement in service with continuity, seniority and regularization in service, hence this claim.
3. The respondent resisted and contested the claim of petitioner, which filed reply interalia raising preliminary objections of maintainability and that the petitioner was employed on contract basis. On merits, it is contended that the petitioner was engaged as part time sweeper in the year 1993 on a fixed salary of Rs. 600/- per month, who was engaged as part time sweeper w.e.f. 1-7-1994 for a fixed period as and when the work was available with the respondent. It is denied that the salary of the petitioner was increased to Rs. 800/- per month in the year 1994. It is contended that the petitioner used to be engaged for a period of 89 days as and when the work was available with the respondent and from 1-3-1997, the petitioner was engaged on contract basis for a fixed period of 89 days, which was executed between the petitioner and respondent on a fixed salary of Rs. 1000/- per month and the contract was extended from time to time for a further period of 89 days as and when the services of the petitioner were required. It is denied that the salary of the petitioner was increased to Rs. 2000/- w.e.f. July 2000 infact the petitioner was again employed on contract from 21-1-2000 on a monthly salary of Rs. 2000/- . It is also denied that the petitioner has being continuously working with the respondent w.e.f. 1993 till 1-5-2001. It is contended that the petitioner used to be engaged by the respondent for a specific period of 89 days as and when his services were required by the respondent and that the petitioner has not completed 240 days in any calendar year nor in the preceding 12 calendar month as envisaged under section 25-F of the Industrial Disputes Act, 1947 and that the disengagement of the petitioner was purely on the basis of the conditions of the contract executed by the petitioner with the respondent, who was disengaged on the basis of terms and conditions of his contract and that the respondent has got no work and funds and is running in huge losses and is finding difficult even to pay the salaries of its regular employees and that the petitioner was engaged on the basis of contract, hence the provisions of Industrial Disputes Act, 1947 are not applicable to him and as such prayed for the dismissal of claim petition.
4. In the rejoinder, the petitioner controverted the assertions made in the reply and reaffirmed and reiterated the averments of the petition.
5. The following issues were framed by this Court on 21-12-2005.
  1. Whether the services of the petitioner has been illegally terminated by the respondent? If so, its effect? ...OPP.
  2. If issue no.1 is proved in affirmative, to what relief of service benefits the petitioner is entitled to? ...OPP.
  3. Whether the present petition is not maintainable? ...OPR.
  4. Relief.
6. I have heard the learned counsels for the parties and have gone through the record of the case.
7. For the reasons to be recorded hereinafter while discussing issues for determination my findings on the aforesaid issues area as under.

Issue No.1 : Yes.

Issue No.2	:	Entitled for reinstatement in service alongwith seniority and continuity but without back wages.
Issue No.3	:	No.
Relief.	:	Reference answered in affirmative per operative part of award.

## REASONS FOR FINDINGS

*Issue No.1 :*

8. Coming to issue no.1, the petitioner has examined two PWs in all. Petitioner Shri Surinder Kumar appeared in the witness box as PW-1, who has stated on oath that he was engaged as sweeper in 1993 at HRTC Rampur and worked till May, 2001 and then his services were illegally terminated without notice or compensation. He had completed more than 240 days in every calendar year but the respondent was giving him one day break after 89 days and these days he is doing labour work.

9. PW-2 Shri Parveen Sharma, Junior Assistant HRTC Rampur, who has stated that the petitioner was engaged as part time sweeper at Rampur with the respondent in the year 1993, who worked as such till April 2001 and proved the mandays chart of the petitioner Ex. PA.

10. To rebut the case of the petitioner, the respondent examined shri Raghuvir Singh, R.M HRTC Rampur, who has stated that the petitioner was engaged as sweeper with the respondent from 1st July, 1994 for 89 days and worked till 19.4.2001 after repeating 89 days from time to time and proved the contract Ex. RA to Ex. RO. The petitioner has not completed 240 days in a calendar year preceding his termination.

11. The case of the petitioner is that he being a sweeper and worked for more than 240 days and his termination without notice and compensation is illegal and as such he is entitled for the protection of section 25-F of the Industrial disputes Act, 1947.

12. On the contrary, the respondent contends that the petitioner is not entitled to any benefits under the Industrial Disputes Act, 1947 as he was engaged on contract basis for 89 days only and the contract was repeated from time to time for 89 days and even the petitioner has not completed 240 working days in any calendar year before his termination.

13. I have considered the respective contention of both the parties and have scrutinized the record of the case.

14. After the close scrutiny of the record of the case, there is no dispute about the appointment of the petitioner as sweeper, who was appointed as sweeper on part time basis by the respondent on 1st July, 1994 and worked till 2001 with fictional breaks. The petitioner was appointed as sweeper on contract basis for 89 days which was renewed from time to time as is evident from Ex. RA to RO placed on record, who worked for 312 days w.e.f. 5/2000 to 4/2001 as is evident from the detail of salary slip Ex. PA placed on record. Moreover, the petitioner has completed 240 working days in a calendar year and his termination without notice or retrenchment compensation is illegal. Here I am fortified with a view taken by their lordship of **Hon'ble Supreme Court as reported in Haryana State Electronics Development Corporation Limited Vs Mamnl, (2006) 9 SCC 434.** that appointment for a short period (89 days) and termination of services at the end of the said period and reappointment after a gap of one day, such action of termination and reappointment repeated again and again for a period of about one year and a half year, in such circumstances, the Hon'ble Supreme Court has held the termination not bonafide but adopted to defeat the object of the Act. Thus it is not covered by section 2(oo) (bb) of the Industrial Disputes Act, 1947. Their lordships of the Hon'ble Supreme Court has held as under:—

*“Section 2(oo) (bb) of the Industrial Disputes Act reads as under :*

**“2. (oo) (bb) termination of the services of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry of such contract being terminated under a stipulation in that behalf contained therein.”**

**“...It is not possible for us to accept the aforesaid plea raised at the hands of the management on account of the fact that the factual position, which has not been disputed, reveals that the respondent workman was repeatedly working on 89 days basis. It is, therefore, clear that the intention of the management was not to engage the respondent workman for a specified period, as alleged, but was to**

**defeat the rights available to her under section 25-F of the Act. The aforesaid practice at the hands of the petitioner management to employ the workman repeatedly after notional break clearly falls within the ambit and scope of unfair labour practice.”**

Similarly our own Hon'ble High Court in case **shri Manoj Kumar sharma Vs. HRTC & Another in CWP No. 39 of 06 dated 28-5-2007** has held that the intention of the management was not to engage the respondent workman for a specified period was to defeat the rights of a workman under section 25-F of the Act as in that case also the petitioner was initially appointed for 89 days and after giving him fictional breaks, reappointed for another 89 days followed by one year appointment. The practice has been adopted by the management of HRTC to defeat the provisions of section 25-F of the Industrial Disputes Act, 1947 which amounts to unfair labour practice. In the instant case also the petitioner was initially appointed as sweeper for 89 days and after giving him fictional break, reappointment for another 89 days followed by other appointments for 89 days as is evident from Ex. RA to RO. It is fully proved on record that even after giving fictional breaks, the petitioner has completed 312 days in the year 2000-01 as is evident from Ex. PA placed on record. This practice of fictional breaks has been adopted by the respondent to defeat the provisions of section 25-F of the Industrial Disputes Act, 1947. Thus, having regard to the entire evidence on record and in view of the fact that the petitioner has completed 312 working days before his termination was affected and his termination without notice and compensation under section 25-F of Industrial Disputes Act, 1947 is illegal. Accordingly, issue no.1 is decided in favour of the petitioner and against the respondent.

*Issue No. 2 :*

15. Since I have held under issue no.1 above, that the services of the petitioner has been illegally terminated by the respondent without notice or payment of compensation, hence the petitioner is held entitled to reinstatement in service with seniority and continuity from the date of illegal retrenchment. However, the petitioner is not entitled to back wages as he has not placed any material on record to substantiate that he was not gainfully employed after his retrenchment. Accordingly, issue no.2 is decided in favour of petitioner and against the respondent.

*Issue No. 3:*

16. In order to prove this issue, no evidence was led by the respondent nor it was pressed during the course of arguments. However I find nothing wrong with this claim which is perfectly maintainable in the present form. Accordingly, issue no.3 is decided in favour of petitioner and against the respondent.

#### RELIEF

As a sequel to my above discussion and findings on issue no.1 to 3, the claim of the petitioner succeeds and is hereby allowed and as such the reference is answered in affirmative and the petitioner is ordered to be reinstated in service forthwith with seniority and continuity in service. However, the petitioner is not entitled to back wages as he has not placed any material on record to substantiate that he was not gainfully employed after his retrenchment. Let a copy of this award be sent to the appropriate government of publication in official gazette. File, after completion, be consigned to records.

Announced in the open court today on this 25th Day of Feb. 2009 in the presence of parties.

JAGMOHAN SINGH MAHANTAN,  
*Presiding Judge,  
Labour court, Shimla.*

**In the Court of Jagmohan Singh Mahantan, Presiding Judge, Industrial Tribunal-Cum-Labour Court, Shimla**

Ref No.	:	179 of 2001
Instituted On	:	15-9-2001
Decided On	:	28-2-2009

Sohan Lal S/o Shri Khumb Dass R/o Village & P.O Rusla, Tehsil Chopal, District Shimla, HP.

*...Petitioner.*

*Versus*

1. The Secretary HPSEB, Vidyut Bhawan, Shimla-4.
2. The Executive Engineer HPSEB Division, Theog District Shimla, HP.

3. S.D.O HPSEB Sub Division Nerwa Tehsil Chopal District Shimla, HP

...Respondents.

*Reference under section 10 of the Industrial Disputes Act, 1947.*

For petitioner : Shri M.S Kanwar, Ld. Csl. AR.  
For respondent : Shri Bhagwan Chand, Ld. Csl.

#### AWARD

1. The following reference has been received for adjudication by this Court from the appropriate government:—

**“Whether the termination of the services of Shri Sohan Lal S/o Shri Khumb Dass Village and P.O. Rusala Tehsil Chopal District Shimla, HP as alleged, by the Executive Engineer HPSEB Division Chopal District Shimla HP w.e.f. 25-9-1996 is legal and justified? If not, what relief of service benefits and amount of compensation, the above workman is entitled to?”**

**“Whether Shri Sohan Lal left the job of his own as alleged by management If so, its effect?”**

2. The petitioner has filed the claim asserting therein that he was initially engaged a beldar with the employer in the year 1981 and continued to work with artificial and fictional breaks till the year 1997 and then the services of the petitioner had been orally terminated without any notice as required under section 25-F of the Industrial Disputes Act. The petitioner has completed 240 days in a calendar year during this period as he worked with full sincerity, devotion and to the utmost satisfaction of his superior but despite this fact the respondent terminated the services of the petitioner without assigning any cogent reasons and without serving 10 days notice on the petitioner, which is against the provisions of Rule 14 of the Industrial Establishment (Standing Orders) Act, 1946 and the petitioner was kept on waiting for reemployment by the respondent but no reemployment has been given to the petitioner till date and the respondents have also violated the provisions of section 25-G and 25-H of the Industrial Disputes Act as new persons have been engaged by the respondents and that the respondents also violated the principles of ID Act by recruiting the fresh persons in place of the petitioner and never offered employment to the petitioner despite many requests and reminders made by the petitioner time and again and the respondent has not maintained the seniority of the petitioner as required under the provisions of the Industrial Disputes Act and as such prayed for reinstatement alongwith all consequential benefits, hence this claim.

3. The respondent resisted and contested the claim of the petitioner, which filed reply contending therein that the petitioner was engaged as daily rated beldar in the year 1982, who worked till 1996 with certain breaks and the petitioner has not completed 240 days in a calendar year and the petitioner was never orally terminated, who left the job of his own and the respondent has never violated the rule 14(1) and 14(2) of the standing order of HPSEB and Articles 14 and 16 of the constitution of India and that the petitioner never made any requests for reengagement with the respondent and the respondent never violated the Industrial Disputes Act, 1947 and as such prayed for the dismissal of the claim petition.

4. No rejoinder filed. The following issues were framed by this Court on 18-5-2004.

1. Whether the termination of Shri Sohan Lal, petitioner by the respondent w.e.f. 25-9-1996 is legal and justified? ...OPR.
2. If issue No-1 is not proved, to what relief of service benefit the petitioner is entitled to? ...OPP.
3. Whether the petitioner has left the job of his own as alleged? ...OPR.
4. Relief.

5. I have heard the Ld. Counsels for the parties and also gone through the record of the case.

6. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under:—

Issue No. 1 : No.

Issue No. 2 : Entitled for reinstatement in service with seniority and continuity but without back wages.

Issue No. 3 : No.  
Relief : Reference answered in affirmative per operative part of award.

### REASONS FOR FINDINGS

*Issue No. 1 :*

6. Coming to issue No-1, the petitioner has examined himself as PW-1 who has stated that he was engaged as beldar on muster roll basis during the year April, 1981 in Chopal Division for lying down the new LT & HT line and 10 to 12 persons were working with him and some of persons working with him are regularized by the department and S/Shri Kalam Singh Murti and Dula Ram are still working with the respondent department. He has completed 240 days in preceding 12 months and the respondent department has given fictional breaks to him and not allowed to continue work, whose services were orally terminated *w.e.f* April, 1997 without any notice or compensation, who has visited the respondent for his reengagement but he was not reengaged and some of the persons engaged after him are still working with the respondent department and the work is still available with the respondent and as such prayed for reinstatement with all consequential benefits.

7. To rebut the case of the petitioner, the respondent examined Er. Hansraj, who has stated that the petitioner was engaged as daily wages beldar on 1-4-1982, who continued as such till 25-12-1986, who was reengaged on 1-4-1995 to 25-9-1996 with fictional breaks and then the petitioner abandoned the job of his own and the petitioner did not move any application to the respondent at any point of time and the respondent never terminated the services of the petitioner and no junior to the petitioner was retained by the respondent and proved the mandays chart of the petitioner Ex. RA.

8. The case of the petitioner is that he being the daily wages beldar having worked for more than 240 days and his termination without notice and compensation is illegal. Moreover his juniors are still working with the respondent department, hence he is entitled for the protection of section 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947.

9. On the contrary, the respondents contend that the petitioner was not terminated by the respondent but the petitioner himself has abandoned the job and no junior to the petitioner is retained by the respondent after his abandonment and as such, the petitioner is not entitled to any relief.

10. I have considered the respective contention of both the parties and have scrutinized the record of the case.

11. After the close scrutiny of the record of the case, it stands proved on record from mandays chart Ex. RA placed on record it is clear that the petitioner has completed 240 working days in a calendar year 1982-83. No doubt, RW-1 Shri Hans Raj J.E HPSEB appeared in the witness box on 24.2.2009, who could not tell whether junior to the petitioner was retained by the respondent. He has further stated that there was no record with him which could show that how many workmen were employed after 1996. Since RW-1 appeared as a departmental witness who has categorically stated that he is well conversant with the facts of the case and brought the record of the case but he could not prove on record as to how many workmen were employed in his Sub Division after 1996 and obviously therefore, adverse inference has to be drawn against the respondent having the entire record of the workmen who could prove that no junior to the petitioner was engaged and retained by the them. In view of no such evidence on record, the adverse inference has to be drawn against the respondent. It is well settled in case titled as **State of HP & Ors V/s Bhatag Ram & Anr. as reported in latest HLJ 2007 (HP) 903.** in which it was held that :—

**“Continuing of 240 days not necessary in 12 calendar months. It is not necessary to workman to complete 240 days during 12 months for taking the benefits of section 25-G & 25-H of the Act.”**

12. The perusal of this ruling makes it clear that it is not necessary that the workman must complete 240 working days in a preceding calendar year of his termination. However, if he completes 240 working days in any calendar year preceding his termination that period will be counted for reckoning of requisite period of working days to cover his case under section 25 F of the Industrial Disputes Act, 1947. In the instant case, the petitioner has proved on record that he worked for more than 240 days in a calendar year as is evident from Ex. RA and further the respondent could not refute the allegation of petitioner that the juniors to him are still working with the respondent and the respondent J.E failed to produce the record of workmen and moreover, no notice nor any compensation was paid to the petitioner at the time of his termination and obviously therefore, I am of the firm opinion that no notice nor any retrenchment compensation was paid by the respondent to the petitioner at the time of termination and as such, the termination of Shri Sohan Lal petitioner by the respondent *w.e.f* 25-9-1996 is illegal and unjustified without complying with the provisions of ID Act, 1947. Accordingly, issue no.1 is decided in favour of petitioner and against the respondent.

*Issue No. 2 :*

13. Since I have held under issue no.1 above, that the services of the petitioner has been illegally terminated by the respondent without notice or payment of compensation, hence the petitioner is held entitled to reinstatement in service with seniority and continuity. However, the petitioner is not entitled to back wages as he has not placed any material on record to substantiate that he was not gainfully employed after his retrenchment. Accordingly, issue No. 2 is decided in favour of petitioner and against the respondent.

*Issue No. 3 :*

14. In support of this issue, no evidence was led by the respondent being the legal issue. It is not proved on record by the respondent that the petitioner himself left the job of his own. However, it is well settled incase titled as **State of HP & Others Vs. Bhagat Ram & Another as reported in latest HLJ 2007 (HP) 903** in which it was held that:—

**“Plea of abandonment of job- merely raising the plea of abandonment is nothing but has to be established on the basis of facts. No facts led to substantiate the plea.”**

Thus, having regard to no evidence on this issue of abandonment, it can safely be concluded that the petitioner has not left the job of his own. Accordingly, the issue is decided in favour of petitioners and against the respondent.

#### RELIEF

As a sequel to my above discussion and findings on issue no.1 to 3, the claim of the petitioner succeeds and is hereby allowed and as such the reference is answered in affirmative and the petitioner is ordered to be reinstated in service forthwith with seniority and continuity in service. However, the petitioner is not entitled to back wages as he has not placed any material on record to substantiate that he was not gainfully employed after his retrenchment. Let a copy of this award be sent to the appropriate government of publication in official gazette. File, after completion, be consigned to records.

Announced in the open court today on this 28th Day of Feb. 2009 in the presence of parties.

JAGMOHAN SINGH MAHANTAN,  
*Presiding Judge,*  
*Labour court, Shimla.*

**In the Court of Jagmohan Singh Mahantan, Presiding Judge, Industrial Tribunal-Cum-Labour Court, Shimla**

Ref No.	:	108 of 2003
Instituted On	:	24-4-2003
Decided On	:	28-2-2009

Nisha Sharma, W/o Shri Kailash Sharma R/o Village Daghog, P.O Baldean, Tehsil & District Shimla, H.P.  
*...Petitioner.*

*Versus*

1. The Superintending Engineer, 11th Circle HPPWD Rampur Bushehar, District Shimla.

2. The Executive Engineer, HPPWD Division Rampur Bushehar, District Shimla.

*...Respondents.*

*Reference under section 10 of the Industrial Disputes Act, 1947.*

For petitioner : Shri S.V Sharma, Ld. Csl.  
For respondent : Shri D.S Parmar, Ld. DDA.

#### AWARD

1. The following reference has been received from appropriate government by this court for adjudication:

2. The petitioner has filed a separate claim asserting therein that she was appointed as beldar in Public Works Department on 20-9-1986 on daily wages on muster roll but was actually deployed as a clerk in the

establishment branch in the office of respondent no.2, who served there upto 31-3-1990 and then her services were illegally terminated without any reason by verbal order and the wages were given to the petitioner as beldar but she worked as clerk/typist and that feeling aggrieved by the impugned termination the petitioner filed an O.A before the Administrative Tribunal which was decided in favour of the petitioner and the Tribunal directed the respondent to reengage the petitioner and that consequent upon the orders of the Tribunal, the petitioner was reengaged vide letter dated 11-10-1995 of the Additional Secretary PWD to the government of HP and that the petitioner submitted her joining report to the respondent No.2 on 1-11-1995, who served with the respondent upto 15-11-1995 as typist and then the services of the petitioner were orally terminated without assigning any reason and that the petitioner visited the office of the respondents number of times for her reengagement but to no avail and that the disengagement of the petitioner is in violation of section 25-G and 25-H of the Industrial disputes Act, 1947 as the respondents have engaged number of juniors to the petitioner and as such prayed for reinstatement as clerk/ typist with full back wages alongwith interest @18% and regularization, hence this claim duly supported by an affidavit.

3. The respondent resisted and contested the claim of petitioner, which filed reply interalia raising preliminary objections that neither any cause of action has ever accrued to the petitioner workman nor she has come with clean hands to file and maintain the present claim, rather the petitioner herself is a wrongdoer, who had concealed material facts. On merits, it is contended that the petitioner was a daily wages worker on muster roll as beldar. However, the petitioner used to hesitate to work with pick-axes and jumper etc. for the execution of work, who used to make verbal requests for providing her petty work in the office and the petitioner was given duties in the office for some time by considering her educational qualification and the circumstances sympathetically, who was never employed as daily wages clerk, the petitioner was correctly paid the wages of the beldar against which she was deployed on muster roll and that the petitioner filed O.A before the Administrative Tribunal and the Tribunal passed the order that the petitioner shall be reengaged forthwith on daily wages in the same capacity at the same station in the absence of any reply of the respondent department and as such the petitioner was reengaged during 11/90 and worked upto 6.2.1991 and then she did not turn up for duties despite issuance of letters annexure R-2 to annexure R-6 and that the petitioner submitted joining report to the respondent Co.2 during 11/95 and as such prayed for the dismissal of claim petition as prayed for.

4. In the rejoinder, the petitioner controverted the assertions made in reply and reaffirmed and reiterated the averments of the petition.

5. The following issues were framed by this Court on 20-7-2005.

1. Whether the termination of services of petitioner by respondent *w.e.f.* 15-11-1995 without complying the provisions of ID Act, 1947 is proper and legal? ...OPR.
2. If issue No.1 is not proved, to what relief of service benefits the petitioner is entitled to? ...OPP.
3. Whether the claim is not maintainable in view of preliminary objection? ...OPR.
4. Whether the petitioner failed to turn up for duty and left the job at her own sweet will? If so, to what effect? ...OPR.
5. Relief.

6. I have heard the learned counsels for the parties and have gone through the record of the case.

7. For the reasons to be recorded hereinafter while discussing issues for determination my findings on the aforesaid issues area as under.

Issue No. 1 : No.

Issue No. 2 : Entitled for reinstatement in service as beldar on daily wages forthwith alongwith seniority and continuity but without back wages.

Issue No. 3 : No.

Issue No. 4 : No.

Relief. : Reference answered in affirmative per operative part of award.



## REASONS FOR FINDINGS

*Issue No. 1:*

8. Coming to issue No.1, the respondents have examined two RWs in all. RW-1 Er. V.S Panwar has stated that the petitioner came from Karcham and was deployed at Rampur in field. She was engaged as beldar on muster roll in July 1988 and she was sent in the office in emergency cases. The petitioner was engaged against the muster roll for the construction of 16 nos. of cars and jeep at Rampur, who left the job in March, 1990 at her own. In cross examination, the witness has denied that the petitioner continued the job till 31-9-1990 and proved the mandays chart Ex. RA. The witness has further denied that the services of the petitioner were terminated without any notice or compensation in April 1990.

9. RW-2 Er. P.D Kashyap has stated that the petitioner was not on duty from April, 1990 till November, 1990 and the petitioner joined her duties as per Administrative Tribunal order in 1990 and worked till 6-2-1991 and then she left the duties without any permission or intimation and the department has issued letters to the petitioner to report for duties, the copies of which are Ex. R-1 to Ex. R-5. The petitioner has not reported for duties till 1-11-1995 and the petitioner refused to work as labourer. The petitioner was insisting that she be permitted to work in the office and the petitioner has not completed 240 working days in preceding year when she left the job. The copy of the joining report of the petitioner is Ex. R-6 and the petitioner never worked in the office in the clerical job. In cross examination the witness has admitted the order of Administrative Tribunal Ex. R-7 and Ex. RA. The witness has admitted the representation Ex. R-9.

10. To prove the claim, the petitioner examined herself as PW-1, who has stated that she was engaged as beldar on daily wages on 20-9-1986 with the respondent and worked as such till 31<sup>st</sup> March, 1990 and the respondent used to take her services as steno typist and also as dispatcher and in establishment branch and then she was terminated orally by the respondent without any notice nor paid any compensation. She preferred a petition against termination before Administrative Tribunal which is Ex. PA and then she resumed duties but her attendance was not marked by the respondent department and she joined the services of the respondent vide order dated 31st July, 1995 Ex. RB but again her services were terminated orally. Her juniors are still working with the respondent but she does not remember their names. She has completed more than 240 working days in every calendar year preceding her termination and as such prayed for reinstatement with all consequential services benefits including back wages. In cross-examination, she has admitted that she was engaged as beldar on daily wages against muster roll of daily wagers. It is denied that she abandoned the job of her own. She did not join at Karcham but worked at Rampur. It is denied that she had not worked for 240 working days. It is also denied that juniors to her are not working with the department. It is further admitted by the petitioner that she was never engaged as daily wages clerk nor paid salary of a clerk.

11. The case of the petitioner is that she being a daily wages clerk/typist having worked for more than 240 days and her termination without notice and compensation is illegal and even her juniors are still continuing with the respondent department and as such she is entitled for the protection of section 25-F, 25G and 25-H of the Industrial Disputes Act, 1947.

12. On the contrary, the respondent contends that the petitioner is not entitled to any benefits under the Industrial Disputes Act, 1947 as she abandoned the job of her own without intimation to the department. Moreover, the petitioner was not engaged in the capacity of clerk/typist, who was engaged as daily wages beldar on muster roll basis the petitioner has not completed 240 working days in a calendar year before her termination.

13. I have considered the respective contention of both the parties and have scrutinized the record of the case.

14. After the close scrutiny of the record of the case, it is proved on record that the petitioner was initially engaged as beldar and not as clerk/typist as the petitioner herself has admitted in her cross-examination that she was never engaged as clerk nor paid wages of clerk and as such she cannot claim to be engaged as clerk/typist on daily wages, who herself has admitted in the cross-examination that she hastened to work as beldar in the fields and requested her officers to depute in the office. It is borne out from the record that the superiors of the petitioner acceded to her request and deputed her in the office but it does not give rise to the inference that she has a lien over the post of steno typist on daily wages, who was only accommodated on compassionate ground being the woman by the respondent. Now adverting to the other aspect of the case, I have gone through the record of the case and observed that the petitioner was engaged as daily wages beldar by the respondent, who worked for 31 days in the year 1986, 243 days in 1987, 335 days in 1988, 318 days in 1989, 129 days in 1990 and 37 days in 1991 as per detail of working days Ex. RA placed on record meaning thereby that she did not complete 240 working days in a calendar year preceding his

termination but she completed 243 days in 1987, 335 days in 1988 and 318 days in 1989 and obviously therefore, she has fulfilled the requirement of section 25-F of the Industrial Disputes Act, 1947 as it stands proved on record that she was terminated without notice and without compensation. Moreover, it is well settled incase titled as *State of HP & Ors Vs Bhagat Ram & Anr. as reported in latest HLJ 2007 (HP) 903*. in which it was held that :—

**“Continuing of 240 days not necessary in 12 calendar months. It is not necessary to workman to complete 240 days during 12 months for taking the benefits of section 25-G & 25-H of the Act.”**

15. The perusal of this ruling makes it clear that it is not necessary that the workman must complete 240 working days in a preceding calendar year of his termination. However, if she completes 240 working days in any calendar year preceding her termination that period will be counted for the reckoning of requisite period of working days to cover her case under section 25 F of the Industrial Disputes Act, 1947. In the instant case, the petitioner has proved on record that she worked for 243 days in he year 1987, 335 days in 1988 and 318 days in 1989 as is evident from Ex. RA placed on record and obviously therefore, I am of the firm opinion that no notice nor any retrenchment compensation was paid by the respondent to the petitioner and as such, the termination of petitioner is bad for want of notice and compensation under section 25-F of the Industrial Disputes Act, 1947 and as such the termination of services of petitioner by the respondent *w.e.f.* 15-11-1995 without complying the provisions of ID Act, 1947 is improper and unjustified. Accordingly, issue no.1 is decided in favour of petitioner and against the respondent.

*Issue No. 2 :*

16. Since I have held under issue no.1 above, that the services of the petitioner has been illegally terminated by the respondent without notice and payment of compensation, hence the petitioner is held entitled to reinstatement in service as beldar only with seniority and continuity. However, the petitioner is not entitled to back wages as she has not placed any material on record to substantiate that she was not gainfully employed after her retrenchment. Accordingly, Issue No.2 is decided in favour of petitioner and against the respondent.

*Issue No. 3 :*

17. In order to prove this issue, no evidence was led by the respondent nor it was pressed during the course of arguments. I find nothing wrong with this claim which is perfectly maintainable. Accordingly, issue no.3 is decided in favour of petitioner and against the respondent.

*Issue No. 4 :*

18. In support of this issue, no evidence was led by the respondent being the legal issue. It is not proved on record by the respondent that the petitioner herself left the job of her own. However, it is well settled incase titled as *State of HP & Others Vs. Bhagat Ram & Another as reported in latest HLJ 2007 (HP) 903* in which it was held that:—

**“Plea of abandonment of job-merely raising the plea of abandonment is nothing but has to be established on the basis of facts. No facts led to substantiate the plea.”**

Thus, having regard to no evidence on this issue of abandonment, it can safely be concluded that the petitioner has not left the job of her own. Accordingly, the issue is decided in favour of petitioners and against the respondent.

#### RELIEF

As a sequel to my above discussion and findings on issue no.1 to 4, the claim of the petitioner succeeds and is hereby allowed and as such the reference is answered in affirmative and the petitioner is ordered to be reinstated in service as beldar forthwith with seniority and continuity in service. However, the petitioner is not entitled to back wages as she has not placed any material on record to substantiate that she was not gainfully employed after her retrenchment. Let a copy of this award be sent to the appropriate government of publication in official gazette. File, after completion, be consigned to records.

Announced in the open court today on this 28th Day of Feb. 2009 in the presence of parties.

JAGMOHAN SINGH MAHANTAN,  
Presiding Judge,  
Labour court, Shimla.

**In the Court of Jagmohan Singh Mahantan, Presiding Judge, Industrial Tribunal-Cum-Labour Court, Shimla**

Ref No. : 172 of 2003  
: 26-3-2006

Ministerial Staff Union

V/s.

HPPWD/IPH, Nahan

Present : Sh. A. K. Gupta, Ld, Csl for petitioner.  
Sh. Kamaljeet Sharma, Ld, Csl for respondent No.1.  
Sh. Jagdish Kanwar, Ld DDA for respondent No.2.

Shri Sharma, Ld. Csl for respondent no.1 has placed on record the copy of order passed by the Director of Industries vide which the petitioner Om Parkash presently working as clerk in the H.P.P.W.D. & I.P.H. workshop (Nahan Foundry) Nahan, is promoted as Branch Incharge w.e.f. 1-1-1987 with all consequential benefits i.e. w.e.f. 1-1-1987 to 30-11-1987. Let the statement of petitioner be recorded on oath. Statement of petitioner recorded separately.

Heard. I am satisfied that the claim of the petitioner stood satisfied by the order of the Director of Industrial-cum-M.D.Nahan Foundry Ltd, who promoted the petitioner as Branch Incharge w.e.f.1.1.1987 with all consequential benefits and as such the claim of the petitioner stands satisfied and the reference is ordered to be answered accordingly. Let a copy of this order be sent to the appropriate government for publication in the official Gazette. File , after completion, be consigned to records.

Announced  
26-3-2009

JAGMOHAN SINGH MAHANTAN,  
*Presiding Judge,  
Labour court, Shimla.*

**In the Court of Jagmohan Singh Mahantan, Presiding Judge, Industrial Tribunal-Cum-Labour Court, Shimla**

Ref No. : 138 of 2002  
Instituted On : 17-5-2002  
Decided On : 30-3-2009

Bhag Singh S/o Shri Robbal Singh R/o Village Doduwal, Tehsil Nalagarh, District Solan, H.P.

...Petitioner.

*Versus*

1. The Executive Engineer, HP State Industrial Development Corporation Baddi, District Solan, H.P.
2. Superintending Engineer, HP State Industrial Development Corporation, Shimla, H.P.

...Respondents.

*Reference under section 10 of the Industrial Disputes Act, 1947.*

For petitioner : Shri J.L Sharma, Ld. Csl.  
For respondent : Already ex-parte.

**AWARD**

1. The following reference has been received by this Court from appropriate government for adjudication:—

2. The petitioner has filed a claim asserting therein that he was employed as Mali on daily wages w.e.f. 1993-94 by respondent no.1 and that the petitioner had been discharging his duties sincerely and diligently to the entire

satisfaction of his superiors and there was no complaint against the petitioner and that the respondents had developed a cold shoulder towards the petitioner and they were in the look out to ease him out when to their comfort an incident of theft was reported to have taken place in the Jogindra Bank, Manpura on 11.2.2001 and the petitioner was arrested for his complicity of criminal conspiracy with the main accused, whereby the services of the petitioner were dispensed with orally and that the petitioner presented himself for duty before respondent after obtaining bail from the Court but the respondent spurned the offer and advised the petitioner to first come clean from the charges then he would be permitted to resume his duty and then the petitioner was in a quandary as he knew that he had been falsely implicated in the case which lost his bread but had no option to wait for the final out come of the case and that the petitioner was absolved of the charges as per order dated 4.12.2003 and then the petitioner again approached the respondents with a copy of judgment of the Court with a request to allow him to join the duty but the respondents dilly dallied the issue and advised the petitioner to visit the office of the former after fifteen days and that the petitioner had been unsuccessfully visiting the office of the respondents regularly for his reengagement and that the action of the respondents is against the spirit of the Industrial Disputes Act, 1947 and that once the petitioner was acquitted from the charge levelled against him, it was incumbent upon the respondent to stand their verbal commitment but to the chagrin and disgust of the petitioner, the respondent issued a formal letter of disengagement on 20.11.2004 with a cheque for Rs. 6,480/- which was not accepted by the petitioner and returned to the respondents and that the action of the respondent is illegal, malafide and against the principle of natural justice and as such prayed for reinstatement with seniority, continuity alongwith back wages with interest @12%, hence this claim.

3. The respondents were properly served but did not put in their appearance before this Court, hence proceed against exparte per order dated 27.2.2006.

4. No rejoinder filed. The following points arise for determination in this case are:

1. Whether the service of the petitioner has been illegally terminated by the respondent? If so its effect? ...OPP.
2. Relief.

5. I have heard the Ld. Counsel for petitioner and also gone through the record of the case.

6. For the reasons to be recorded hereinafter while discussing point for determination my findings on the aforesaid points are as under:—

Issue No.1 : Yes.

Relief. : Reference answered in affirmative per operative part of award.

#### REASONS FOR FINDINGS

*Issue No. 1 :*

7. Coming to Issue No.1, the petitioner stepped into the witness box as PW-1, who has stated that the he was engaged as Mali on daily wages by the respondent in 1993-94, whose services were terminated in 2001 on the allegation that he involved in a police case, who was acquitted by the Court per judgment Ex. PA and then he requested for reengagement as per application Ex. PB but the respondent has not considered his request and the respondent sent him a cheque for Rs. 6,480/- which he returned and the letter is Ex. PC and his reply is Ex. PD.

8. The case of the petitioner is that he was illegally and wrongly removed from service on the allegation of theft at Jogindra Bank, Manpura, Tehsil Nalagarh, District Solan for which he was tried and acquitted by the Court but even after the passing of acquittal order by the Court, the respondents have not taken him back on duty and the respondents also sent a cheque for Rs. 6,480/- which he has returned and as such his termination after the completion of 240 days in every calendar year preceding his termination is against the mandatory provision of section 25-F of the Industrial Disputes Act, 1947.

9. I have considered the respective contention of petitioner and have scrutinized the record of the case.

10. After the close scrutiny of the record of the case, It remains a fact that the services of the petitioner have been terminated by the respondent on the ground that some theft case was registered by the police against the petitioner, who was acquitted from the charges levelled against him by the Court vide order dated 4.12.2003 Ex. PA placed on record. It is borne out from the record that the petitioner has completed 240 working days in every calendar year preceding his termination. It is crystal clear from the record that the petitioner was acquitted by the Court of Ld.

JMIC, Nalagarh vide order dated 4.12.2003 and therefore, the petitioner cannot be punished for any charge especially when he was absolved from the charge levelled against him.

Now adverting to the other aspect of the case, it is clear that the respondents instead of reengaging the petitioner to his duties as Mali, terminated his services by sending a sum of Rs. 6,480/- by the respondent without notice and without any justification under section 25-F of the Industrial Disputes Act, 1947 which was refused by the petitioner. Since, the petitioner was acquitted by the Ld. Criminal Court, Nalagarh against the charges of theft against him and therefore there was no occasion for the respondents to terminate the services of the petitioner without any rhyme and reason and obviously therefore, I have no hesitation in coming to the conclusion that the services of the petitioner has been illegally and wrongly terminated by the respondents without complying with the mandatory provisions of section 25-F of the Industrial Disputes Act, 1947. Accordingly, point no.1 is decided in favour of petitioner and against the respondents.

#### RELIEF

As a sequel to my above discussion and findings on point no. 1 above, the claim of the petitioner succeeds and is hereby allowed and as such the petitioner is ordered to be reinstated forthwith along-with seniority and continuity in service and as such the reference is ordered to be answered accordingly. However, the petitioner is not entitled to back wages as he has not placed any material on record to substantiate that he was not gainfully employed after his termination. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open court today on this 30<sup>th</sup> day of March, 2009 in the presence of parties counsels.

JAGMOHAN SINGH MAHANTAN,  
*Presiding Judge,*  
*Labour court, Shimla.*

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**In the Court of Jagmohan Singh Mahantan, Presiding Judge, Industrial Tribunal-Cum-Labour Court, Shimla**

Ref No. : 37 of 2008  
: 20-3-2009

Smt. Meera Devi

V/s

Parther, M/S Asa Biotels, Baddi

Present : None for the petitioner.  
Sh. Jai Pal, Ld. AR for respondent.

It is 4.28pm case called in the pre and post lunch sessions, but none has appeared on behalf of the petitioner. It seems that the petitioner has no interest to pursue the case. Accordingly, the claim of the petitioner is dismissed and the reference is answered accordingly. Let a copy of this order be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced  
20-3-2009

JAGMOHAN SINGH MAHANTAN,  
*Presiding Judge,*  
*Labour court, Shimla.*

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**In the Court of Jagmohan Singh Mahantan, Presiding Judge, Industrial Tribunal-Cum-Labour Court, Shimla**

Ref No. : 62 of 2006  
Instituted On : 6-5-2003  
Decided On : 23-3-2009

Ram Parkash S/o Shri Partap Singh R/o Village Koti, P.O Kiari, Tehsil Kothkhair, District Shimla, H.P.

...Petitioner.

*Versus*

1. Himachal Pradesh State Forest Corporation, Ltd. Van Bhawan, SDA Complex, Kasumpti, Shimla-9.
2. The Divisional Manager, Himkash State Depot, Himachal Pradesh, Forest Corporation, Baddi, District Solan, H.P.

...Respondents.

*Reference under section 10 of the Industrial Disputes Act, 1947.*

For petitioner : Shri Surinder Chauhan, Ld. Csl.

For respondents : Shri Swaran Sharma, Ld. Csl.

#### AWARD

1. The following reference has been received for adjudication by this Court from the appropriate government:—

**“Whether the termination of the services of Shri Ram Parkash S/o Shri Partap Singh workman by the Divisional Manager, Himkash State Depot. Himachal Pradesh Forest Corporation Baddi, District Solan HP w.e.f. 25.12.2002 without complying the provisions of Industrial Disputes Act, 1947 is proper and justified? If not, what relief of service benefits and amount of compensation, the above aggrieved workman is entitled to?”**

2. The petitioner has filed the claim asserting therein that he was initially engaged as labourer on 6-5-1988 at Parwanoo and then he was appointed on daily wages as Timber Watcher on 1-6-1989 at the same place and continued as such till 24-12-2002 when the petitioner suddenly fell ill and the absence of the petitioner for this brief period, was not intentional, deliberate but was on account of his sudden illness which prevented him from doing the work during the said period and the absence from duty of the petitioner was condoned by the department and was allowed to continue to perform the duties as Timber Watcher *w.e.f.* March, 2002 and as per seniority list maintained by the respondent, the petitioner has been shown in serial No.36 amongst total 46 workers which shows that the petitioner is continuously performing his duties since 1-6-1989 and as such the petitioner had been working as daily waged timber watcher with the respondent *w.e.f.* 1-6-1989 till 24-12-2002 and that on December, 1996, the petitioner had already completed eight years of continuous employment with the respondent corporation and as per the policy of the State Govt, the services of the petitioner were not regularized by the respondent which was binding upon the respondent corporation and that the respondent served a notice upon the petitioner under section 25(I) of the Industrial Disputes Act, 1947 whereby the services of the petitioner were retrenched without any rhyme and reasons and the services of the petitioner has been disengaged illegally, wrongly and in violation of the provisions of the Industrial Disputes Act, 1947 and the notice as issued is not only illegal but the same is also defective as the basic provisions of section 25-F have not been followed and the services of the petitioner could not have been terminated in the manner as terminated through notice dated 31-12-2002 and the reasons put forth in the notice are factually incorrect even to the very knowledge of the respondent as there is still sufficient work available with the respondent and that the petitioner has completed 13 years of service as daily wages timber watcher with the respondent and the notice issued by the respondent is wrong, illegal and liable to set aside and there are many persons junior to the petitioner who are still working in the corporation and have been regularized which is against the provisions of last come first go and that the notice as issued under section 25-F of the ID Act, 1947 is itself defective as the same is not in compliance with the provisions section 25-F as complete one month notice has not been given to the petitioner nor he has been paid in lieu of such notice, wages for the period of the notice and that the petitioner filed an O.A before the Administrative Tribunal and obtained the interim order against the respondent directing them not to disengage the service of the petitioner if some juniors are there and the respondent failed to comply with the interim orders dated 31-1-20023 and the O.A was finally disposed of by the Administrative Tribunal on the ground of jurisdiction and that the action of respondent is illegal, arbitrary, unlawful and discriminatory in disengaging, retrenching the services of the petitioner and smells of ulterior motive and as such prayed for reinstatement as timber watcher with full back wages alongwith with all consequential benefits, hence this claim.

3. The respondent resisted and contested the claim of the petitioner, which filed reply interalia raising preliminary objections that the petitioner does not fall within the definition of workman as defined under the Industrial Disputes Act, 1947 and that the petitioner has no cause of action to file and maintain claim and that the petitioner has not come to law with clean hands and is guilty of deliberate and intentional misstatement of facts and concealment of material facts from this Court, estoppel, delay and laches and that the application under reply is not verified nor accompanied by an affidavit as mandated under law. On merits, it is contended that the petitioner was initially engaged

as daily wages Chowkidar on 6-5-1988 and then on 1-6-1989 as Chowkidar for watch and ward of timber, who abandoned the job on 22-11-1999 for the reasons best known to him without intimation to the respondent, who remained wilfully absent from work and failed to report for duties for a period of more than two years and the petitioner vide letter dated 1-1-2000 was directed to report back for duties but the petitioner failed to comply with the directions of the respondent, who remained absent from the duty without any intimation up to 19-3-2002 and there has been a clear cut break in service of the petitioner, who has failed to complete 240 days of continuous service and the respondent has condoned the absence of the petitioner for two years whose engagement on 20-3-2002 was wholly afresh, who also abandoned the job on 1-1-2003 and then the retrenchment notice was issued to the petitioner on 31-12-2002 after duly complying with the conditions as laid down in the ID Act. It is denied that the absence of the petitioner was not intentional or deliberate and the period of absence was condoned by the department. It is also denied that the petitioner was allowed to continue to perform duties as timber watcher. It is contended that the engagement of the petitioner was afresh, due to availability of work with no benefits of his previous engagement. It is denied that the petitioner is at serial No. 36 in the seniority list or is continuously performing duties since 1-6-1989, the seniority list as maintained by the petitioner is of the period prior to his abandoning the job on 22-11-1999 and the petitioner cannot derive any benefits out of the same. It is denied that the respondents have violated any policy regarding regularization of the State Government and the petitioner has no right to regularization as per the latest law laid down by the Hon'ble Supreme Court. It is denied that the petitioner has completed 13 years of service and the services of the petitioner have been illegally terminated by the respondent and the notice served to the petitioner is defective or retrenchment compensation as envisaged under the law has not been paid to the petitioner. It is also denied that the persons junior to the petitioner have been retained or the principle of last come first go has not been adopted and as such prayed for the dismissal of the claim petition.

4. In the rejoinder, the petitioner controverted the assertions made in the reply and reaffirmed and reiterated the averments of the petition.

5. The following issues were framed by this Court on 25-04-2007.

1. Whether the services of the petitioner have been illegally terminated by the respondent without complying the provisions of Industrial Disputes Act, 1947? If so, its effect? ...OPP.
2. If issue no.1 is proved in affirmative, to what relief, the petitioner is entitled to? ...OPP.
3. Whether the petitioner has no locus standi and no cause of action? ...OPR.
4. Whether the petition is barred by limitation and is not maintainable in the present form? ...OPR.
5. Relief.

6. I have heard the learned counsels for the parties and have gone through the record of the case.

7. For the reasons to be recorded hereinafter while discussing issues for determination my findings on the aforesaid issues area as under.

Issue No. 1	:	No.
Issue No. 2	:	Not entitled to any relief.
Issue No. 3	:	yes.
Issue No. 4	:	No.
Relief.	:	Reference answered in negative per operative part of award.

#### REASONS FOR FINDINGS

*Issue No. 1 :*

8. Coming to issue no.1, the petitioner has examined himself as PW-1, who has stated that he was engaged as Chowkidar with the respondent No.1 at Parwanoo on 6-5-1988 where he worked till 24-12-2002 and on 1-6-1989, he was appointed as Timber Watcher on daily wages. He remained sick for 24 months *w.e.f.* 11-11-1999 to 20-3-2002 as he was suffering from mental depression during that period. He also made an application for medical leave alongwith

medical certificate. He was reengaged on 21-3-2002 by the respondent and his absence on account of medical leave was condoned by the respondents and proved the seniority list Ex. PA. His colleagues were made regular by the department and the work is still available with the respondents. Notice Ex. PB was received by him on 24-12-2002, who had worked with the respondent for 240 working days in a calendar year preceding his termination and as such prayed for reinstatement with all consequential benefits.

9. To rebut the case of the petitioner, the respondent examined Shri Ranjeet Singh, Senior Assistant, who has stated that he is well conversant with the facts of the case and also brought the record of the case. The petitioner was engaged as Chowkidar on daily wages on 6-5-1988 and continued as such till 21-11-1999 and then the petitioner left the job of his own and the respondent wrote a letter Ex. RA to the petitioner to resume his duties on 10-1-2000 but in-vain and on 20-3-2002, the petitioner had put in his appearance in the office, who was taken a fresh by the respondent and then on 25-12-2002, the petitioner left the job of his own without intimation and then the respondent served a notice Ex. PB to the petitioner on 31-12-2002 under section 25-F of the ID Act, 1947 and then the petitioner did not join his duties and the seniority of the petitioner was disturbed when he left the job of his own and as such the petitioner is not entitled to any relief as prayed by him.

10. The case of the petitioner is that he being the daily wages Chowkidar having worked for more than 240 days in each calendar year, who remained sick for 24 months *w.e.f.* 11-11-1999 whose absence was condoned by the respondent department on account of medical leave, who was illegally terminated from service. Moreover his juniors are still working with the respondent department, hence he is entitled for the protection of section 25-F of the Industrial Disputes Act, 1947.

11. On the contrary, the respondents contend that the petitioner was not terminated by the respondent but the petitioner himself has abandoned the job of his own, who has failed to report for duties for more than two years despite directions issued by the respondent and finally the services of the petitioner have been legally terminated by serving him with notice under section 25-F of the ID Act, 1947 and no junior to the petitioner is retained by the respondent after his termination and as such, the petitioner is not entitled to any relief. 12. I have considered the respective contention of both the parties and have scrutinized the record of the case.

13. After the close scrutiny of the record of the case, it remains a fact that the notice of one month under section 25-F of the Industrial Disputes Act, 1947 Ex. PB was served upon the petitioner as is evident from the notice dated 31-12-2002 Ex. PB placed on record. It is also borne out from the record that the petitioner was habitual absentee, who left the job several times without any intimation to the respondent and the petitioner tried to establish on record that he could not join his duties due to his mental depression but it remains a fact that no leave application was moved by the petitioner to the respondent alongwith medical certificate nor his illness of mental depression is proved on record which could show that the illness of the petitioner prevented him from joining his duties. Moreover, it stands proved on record that the respondent served a one month notice under section 25-F of the Industrial disputes Act, 1947 upon the petitioner and as such it does not lie in the mouth of the petitioner to say that his services were terminated without mandatory notice under section 25-F of the ID Act, 1947. Accordingly, I hold that the services of the petitioner has not been illegally terminated by the respondent but the legal and valid notice under section 25-F of the ID act, 1947 was served upon the petitioner and as such this issue is decided in favour of the respondent and against the respondents.

#### *Issue No. 2 :*

14. Since I have held under issue no.1 above, that the services of the petitioner have been legally terminated by the respondent after serving him with a notice under section 25-F of the ID Act, hence he is not entitled to any relief. Accordingly, issue No.2 is decided in favour of petitioner and against the respondent.

#### *Issue No .3 :*

15. Since I have held under issue no.1 above that the services of the petitioner have been terminated after serving a notice under section 25-F of the ID Act, 1947, hence the petitioner has no locus standi nor any enforceable cause of action to file the claim. Accordingly, the issue is decided in favour of petitioners and against the respondent.

#### *Issue No. 4 :*

16. In support of this issue, no evidence was led by the respondents. However I have scrutinized the record of the case and observed that there is no limitation under the Industrial Disputes Act, 1947 as it was held by their lordship of Hon'ble Supreme Court reported in (1999) 6 SC 82 case titled as **Ajayab singh Vs. Sirhind Cooperative Marketing-cum- processing Service Society Limited and Another**. In which it was held that:—

**“the provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if**



**raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”**

Accordingly, on the strength of this ruling, it can safely be concluded that there is no limitation under the Industrial Disputes Act, 1947, and further I find nothing wrong with this claim petition which is perfectly maintainable in the present form. Accordingly, issue no.4 is decided in negative.

#### RELIEF

As a sequel to my above discussion and findings on issue no.1 to 4, the claim of the petitioner fails and is hereby dismissed and as such the reference is answered in negative. Let a copy of this award be sent to the appropriate government of publication in official gazette. File, after completion, be consigned to records.

Announced in the open court today on this 23rd Day of March 2009 in the presence of parties.

JAGMOHAN SINGH MAHANTAN,  
*Presiding Judge,*  
*Labour court, Shimla.*

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**In the Court of Jagmohan Singh Mahantan, Presiding Judge, Industrial Tribunal-cum-Labour Court Shimla**

Ref No : 58 of 1996

Instituted On : 15-5-1996

Decided On : 30-3-2009

1. Rajkumar 2. Rakesh Kumar 3. Baijnath 4. Sewa Ram 5. Prakash Chand 6. Lalman 7. Prem Nath 8. Rajnath 9. Surinder Kumar 10. Amar Nath 11. Chander Bhan. All workers of Steel Utpadan Kendra of Himachal Khadi Ashram, Shimla through Shri J.C Bhardwaj, President HP Industrial workers, Saproon, H.P.

*..Petitioners.*

*Versus*

Himachal Khadi Ashram, 70- The Mall Shimla through its Secretary

*..Respondent.*

*Reference under section 10 of the Industrial Disputes Act, 1947.*

For petitioner : Shri J.C. Bhardwaj, Ld. AR.

For respondent : Shri Virender singh Chauhan, Ld. Csl.

#### AWARD

1. The following reference has been received for adjudication by this Court from the appropriate government:—

**“Whether the demand raised by Shri Raj Kumar and 10 other workers (list of workers and demand charter enclosed) with the Secretary, Himachal Khadi Ashram, 70- The Mall Shimla, vide their demand charter, dated 13.1.1995 are genuine and justified? If yes, which of their demands should be accepted and from which date?”**

2. The petitioners have filed a claim asserting therein that the respondent management is a big industrial establishment and as such is running many factories within the state of Himachal Pradesh and as such the steel furniture Utpadan Kendra, Saproon, Solan is also one of the factories which is manufacturing steel goods with the help of workers and machines for the last 13-14 years and selling these goods in the market to earn the profit and that the petitioners have been employed as workmen to operate the machines and to manufacture the steel goods like Almirahs, Tables, Book cases, Chairs, Racks, Paper trays, Dust bins etc. and every workman is a workman under section 2(s) of the Act and that the petitioners are employed with the respondent for the last 10-14 years and since then they are producing steel furnitures for sale in the market and that the workmen are demanding their legitimate rights as given

under various labour enactments since long but the management is reluctant even to implement the statutory provisions of various labour laws and indulged in unfair labour practice. The management had entered into a settlement with the petitioners on 13-6-1998 vide which they were accepted as piece rate by the management, copy of which is Annexure PB and that the workmen served a demand charter on 13-1-1995 which is Annexure PC and that during the year 1994 when workmen were pressing hard on the management to obey and implement all the labour laws applicable to them and due to these demands, the management has become prejudiced and aggressive and declared illegal lock out since 2-1-1995 upto 27-2-1995 which is lifted on the intervention of Labour Inspector-cum-Conciliation Officer, Solan and the workmen are not at fault at any point as they were present for normal working but they have been deprived forcibly to do so by the management and that the workmen are entitled for annual leave with wages as per section of the Factory Act, 1948 and they are also entitled for casual and sick leaves vide Act, no. 7 of 1970 and this demand is not only justified but is a very genuine right of the workmen being statutory right and that the workmen are entitled for increase of 25% or more wages as applicable in the steel industries for the category of highly skilled workers as the work of mechanical and manual is very heavy, difficult, rough and tough and that the workmen are also entitled for two uniforms in one calendar year alongwith actual stitching charges and two pairs of shoes as the work is of such nature where smoke and dust is always prevalent there in the workshop and that the workmen are also entitled for construction of quarters or sanction of house rent allowance @ 10% and that the workmen are also demanding the maintenance of proper record of attendance and salary/wages register according to the provision of law and that the workmen are entitled to the bonus as provided in the Act and that the demands raised in the demand charter dated 13-1-1995 by the workmen are just and reasonable and as such prayed that the demands be allowed with retrospective effect from the date of demand notice dated 13-1-1995 and the lockout imposed on the workmen be declared null, void and inoperative and the workmen be treated on duty for all the purposes throughout, hence this claim.

3. The respondent resisted and contested the claim of the petitioners, which filed reply raising preliminary objections of jurisdiction, maintainability as the petitioners No.1 to 5 are contractors with the respondent and not the employees of the respondent and that petitioners No.6 to 11 are neither contractor nor the workmen or the employee of the respondent and that the petition is barred by principle of resjudicata. On merits, it is contended that the respondents are manufacturing the articles and that the respondents have never employed the petitioners in their unit, hence they are not entitled for the demands which they have alleged in their demand charter and that the respondents are always increasing the rate of piece work from time to time as negotiation arrived at between the petitioners no.1 to 5 and the respondents, hence there is no question for enhancement in the piece rate and as such prayed for the dismissal of the claim petition.

4. No rejoinder filed. The following issues were framed by this Court on 26.2.1997.

1. Whether the demand raised by the petitioners vide their demand chart dated 13.1.1995 are legal, genuine and enforceable on the grounds as alleged? OPP.
2. Whether the petition is not maintainable as alleged? OPR.
3. Whether the petitioners are not the workmen or employee of the respondent as alleged? OPR.
4. Relief.

5. I have heard the Ld. Counsels for the parties and have also gone through the record of the case.

6. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings on the aforesaid issues are as under:—

Issue No. 1 :	No.
Issue No. 2 :	Yes.
Issue No. 3 :	Yes being the workmen under section 2(s) of the ID Act, 1947.
Relief :	Reference answered in negative per operative part of award.

#### REASONS FOR FINDINGS.

##### *Issue No-1:*

7. Coming to issue No-1, the petitioners have examined two PWs in all. PW-1 Shri Sewa Ram has stated that since 1.1.1984, he had been serving the respondent as Painter and the remaining petitioners were also inducted into the employment in the year 1984, 1985 and 1986 and the furniture of all kinds is manufactured by the respondents and about 12/13 workers were employed by the respondents. The machines deployed on work are of 15 HP. There are about 5/6 machines working. He was working on daily wages alongwith other petitioners and remained for 1½ years and proved the demand charter Ex. PA. They deserve to be regularized now in view of the long continuous service till

date. They are also entitled for earned leave and casual leave as per the provisions of Factories Act and the respondent never allotted them to avail earned leave or casual leave. The respondents have not provided them free residence nor paid house rent allowances. The respondent did not provide any uniform, bonus under the payment of Bonus Act. The respondents are not maintaining the attendance register or salary register and they raised these demands in 1988 vide Ex. PB and respondent raised their wages by 10% only vide Ex. PC.

8. PW-2 Sh. S.P. Guru, Labour Inspector has proved demand notice Ex. PA. The respondent had closed the factory *w.e.f.* 2-1-1995 to 27-2-1995 and he intervened and the petitioner were reinstated by the respondents and he summoned the record from the respondents such as attendance register, adult worker register, payment of wages register etc. which was not produced by the respondents and withheld the record. The respondent factory is registered under the Factories Act. The petitioners demand is to get earned, casual and medical leave from the respondent to which they are entitled. He was required to inspect the factory of the respondent with regard to the payment of bonus to the petitioner but he did not inspect the record of the respondents as there was no complaint against the respondents and he cannot assign any particular reason as to why he did not inspect the demands raised by the petitioner against serial number 7 in Ex. PA.

9. To rebut the case of the petitioner, the respondent examined Sh. Lalit Kumar, who has stated that he is the Incharge of steel furniture factory of the respondent at Saproon and the petitioner was a piece rated worker and doing the work of painting since 1985 and the piece waged worker are not recorded in the official register like muster roll, attendance or leave register etc. and since 1995, the petitioner remained on piece rated worker and not a worker for 240 days in any of the calendar year so far. They do not fall in the category of daily waged worker as they are piece rated worker and they were employed on contract basis. The rates of wages were enhanced according to the years of employment and they are not bound by daily attendance. They were at liberty to attend or to absent themselves or to choose the day of their working throughout the whole year. Raj Kumar petitioner was assigned the piece rate working *w.e.f.* 12-8-1998, who did piece rate work till March, 1990, who was only a intermittent worker, who had never completed 240 days in a calendar year. Parkash petitioner was never assigned any such piece rated work during his tenure from April, 1985 to March, 1990. Parkash Kumar was assigned the work in August, 1986 to October, 1986. Baij Nath during his tenure was not assigned any piece rated work. In cross examination, he deposed that there is no other worker whether regular permanent or otherwise than the petitioners. Incharge of the factory is however a regular and permanent employee. He admitted that the factory is giving the production of the steel furniture right from 1984 onwards till date. According to him, right from 1985 to 1990, there were other workers like Vijay Kumar, Jai Shankar, Deep Chand and Sohan Lal etc. who denied that all these workers were only helpers. All of them were also working against piece rates but deposed that Sohan Lal was a Carpenter manufacturing Almirahs. Jaishaner was making Chairs as Carpenter. Chander Bhan was a painter. Their work as such is incorporated in Ex. PD. He denied that all the petitioners had worked for 365 days. The petitioners had submitted a representation for their regularization. It was compromised later on. The wages of the petitioners as a result of enhancement by 10%. The piece rated workers are not entitled to any leave or other benefits.

10. It may not be out of place to mention here that my Ld. predecessor after hearing the case dismissed the claim of the petitioners vide his separate award dated 27-3-1999 holding that the petitioners are not the workmen under section 2(s) of the Industrial disputes Act, 1947. After having felt aggrieved and dissatisfied by the said findings of the award, the petitioners preferred a writ CWP no. 265 of 1999 before the Hon'ble High Court of H.P and the Hon'ble Justice Shri L.S Panta has held on 17-12-2003 that the petitioners are workmen and the award dated 27-3-1999 passed by this Court was quashed and set aside and this Court was directed to restore the reference to it original number and decide issue no. in accordance with law after giving reasonable opportunity to the parties.

11. Ld. AR for the petitioners has vehemently argued at the very out set that the petitioners were the employees of the respondent and as such they are entitled to all the benefits under the Industrial Disputes Act, 1947 and the demands raised by the petitioners in their demand charter dated 13-1-1995 are genuine and justified.

12. On the contrary, Shri Virender Chauhan, Ld. Csl. for respondent has controverted the arguments of Shri J.C Bhardwaj, AR and has submitted that the petitioners were never the employees of the respondent, who are only the workmen doing the work of the respondent on piece rate basis, who used to earn the wages as per piece rate and there was no relationship of employee and employer between the petitioners and the respondent and the respondents never passed any order for termination of the petitioners nor there was any occasion to do so as the petitioners are the piece rated workmen, whose work is to make the iron Almirahs and to paint it per piece as fixed by the respondent and there is no control over the work of the petitioners by the respondents, who seldom go to their native place after completion of their work and the payment of the work is to be made by the respondents on the basis of completion of per piece and the question of demands does not arise at all and therefore the petitioners are not entitled to any demand raised by them in their demand charter dated 13-1-1995. Moreover, the respondents are ready to take the petitioners on piece rate basis as the petitioners were never engaged on regular as well as daily wages basis by the respondents.

13. I have considered the respective contention of both the parties and have scrutinized the record of the case.

14. After the close scrutiny of the record of the case, it remains a fact that the petitioners are workmen as held by the Hon'ble High Court in CWP no. 265 of 1999 dated 17-12-2003 and it is not disputed that the petitioners are piece rated workmen, who is to be made payment on the basis on the completion of every piece prepared and painted as fixed by the respondents. The question of accepting demands of the petitioners *vide* their demand charter dated 13-1-1995 does not arise at all as the petitioners are piece rated workmen, who are to be given job of piece rate work when available as per the requirement and demand of the respondents. It is also borne out from the record that the respondents provide raw material to the petitioners as per the requirement of the work on contract basis and the work per piece was given only to the petitioners when there is requirement of demand but it does not give rise to the inference that the demands of the petitioners as given in the demand charter dated 13-1-1995 are legal and justified. Moreover, there is nothing on record which could show that the demands of the petitioners are legal just and valid and it is proved on record that the respondents have already enhanced the piece rates @ 10% and obviously therefore no further demand of the petitioner is held to be genuine, legal and valid. Moreover, Shri Virender Chauhan Ld. Counsel for respondents has given the undertaking at the bar that the respondents are ready to provide work to the petitioners on piece rate basis as per the requirement of demand and they have already enhanced the piece rated work @ 10% and obviously therefore, I have no hesitation in coming to the conclusion that the demands raised by the petitioners *vide* their demand charter dated 13-1-1995 are illegal and not enforceable on the grounds claimed by them being the daily rated workmen and not the employees of the respondents. Accordingly, this issue is decided against the petitioners and in favour of the respondents.

*Issue No. 2 :*

15. Since I have held under issue no.1 above that demand raised by the petitioners *vide* their demand charter dated 13-1-1995 are illegal, without basis and foundation, hence the petitioners are not entitled to any relief as prayed by them. Accordingly, the issue is decided in favour of respondents and against the petitioners.

*Issue No. 3 :*

16. In support of this issue, the respondents have led evidence to the effect that the petitioners are piece rated workmen on contract basis having no control over their work and the payment is to be made to them on the basis of their work i.e the completion of iron Almirahs finally prepared and rated by them and the question of their demands does not arise at all especially when they are not the employees of the respondents, who are only the piece rated workmen. It is significant to note that the Hon'ble High Court of HP in CWP No. 265 of 1999 dated 13.12.2003 has already held that the petitioners are workmen under section 2(s) of the ID Act, 1947 and obviously therefore, this issue has already been settled by the Hon'ble High Court in CWP no.265 of 1999 dated 17.12.2003 and as such this issue is decided accordingly.

#### RELIEF

As a sequel to my above discussion and findings on issue no. 1 to 3 above, the claim of the petitioners fails and is hereby dismissed and as such the reference is ordered to be answered in negative. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open court today on this 30th Day of March 2009 in the presence of parties counsels.

J. S. MAHANTAN,  
Presiding Judge,  
Industrial Tribunal-cum-Labour court, Shimla.

**In the Court of Jagmohan Singh Mahantan, Presiding Judge, Industrial Tribunal-cum-Labour Court Shimla**

Ref. 153/2007

Sh., Kuldeep V/s The G.M. M/S Suriba Industrial Kunjhal, Nalagarh.

19-3-2009

Present : None for petitioner.  
Sh. S.D.Gill, L.Csl. for respondent.

Case called in the pre and post lunch seccions, but none has appeared on behalf of the petitioner. It seems that the petitioner has no interest to persue the case. Accordingly, the claim of the petitioner is dismissed and the reference is asswered accordingly. Let a copy of this order be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced  
19-3-2009

Sd/-  
Presiding Judeg,  
Labour Court, Shimla.

**In the Court of Jagmohan Singh Mahantan, Presiding Judge, Industrial Tribunal-cum-Labour Court Shimla**

Ref. 106/2007

Arun Kumar V/s The M.D. M/S samitiz India, Baddi.

Present : None

Registered letters with AD sent received back with the report that no person is living in the name of Anil Kumar nor no office of AITUC was found at the given address in the reference. I am satisfied that the petitioner cannot be found an any other address, since the petitioner is not found at the address given on the reference, hence the reference is ordered to be answered in negative holding that the petitioner is not coming forward to put up his claim nor found available at the address given and therefore, his alleged termination w.e.f. 21-7-2008 without complying with the provisions of Industrial Disputes Act, 1947 is proper and justified. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion be consigned to records.

Announced  
4-3-2009

Sd/-  
Presiding Judge,  
Labour Court, Shimla.

**In the Court of Jagmohan Singh Mahantan, Presiding Judge, Industrial Tribunal-cum-Labour Court Shimla**

Ref. No. 99 of 2004

Instituted on. 10-6-2004

Decided on. 31-3-2009

Jai Dutt S/o Shri Ram Swaroop, C/o Shri J.C Bhardwaj, President HPAITUC, H.Q Saproon, Solan District Solan, H.P. ..Petitioner.

*Versus*

The Executive Engineer, HPSEB (electrical) Division, Solan, District Solan, H.P.

*..Respondent.*

*Reference under section 10 of the Industrial Disputes Act, 1947.*

For petitioner : Shri J.C Bhardwaj, Ld. AR.  
For respondent : Ms. Sharmila Patial, Ld. Csl.

**AWARD**

1. The following reference has been received from appropriate government by this court for adjudication:

**“Whether the retrenchment of the services of shri Jai Dutt S/o Shri Ram Swaroop, daily wages workman by the Executive Engineer, (Electrical) Division, HPSEB Saproon, Solan w.e.f. 26.5.2000 without complying the provisions of Industrial disputes Act, 1947 is proper and justified? If not, what relief of service benefits and amount of compensation, the above aggrieved workman is entitled to?”**

2. The petitioner has filed a separate claim asserting therein that he was employed with the respondent during the month of July, 1999 and continued as such till 26-5-2000 and then he was illegally removed from service as the petitioner completed 240 days of service in a calendar month preceding his termination and that the petitioner was retrenched for the purpose of section 2-oo of the Act which is bad in law for non compliance of certified standing orders of the respondent board as no notice was served to the petitioner nor retrenchment compensation was paid to him at the time of his retrenchment and that the respondent did not comply with the statutory and mandatory provisions of section 25-F and 25-N of the Act as the respondent neither served one month notice nor paid the wages in lieu thereof and that the retrenchment of the petitioner is also violative and discriminatory under Article 14 & 16 constitution of India as the petitioner was denied the right of equality in the matter of employment and that the services of the junior workmen were retained by the respondent while retrenching the services of the petitioner workman and in this manner the respondent committed serious violation of section 25-G of the Act and that the right of livelihood, its continuity, better, proper and healthy service conditions are now recognized basic right as the precedents set by the Hon'ble Supreme Court while interpreting articles 21 & 41 of constitution of India and as such prayed for reinstatement in service with continuity, seniority alongwith full back wages, hence this claim.

3. The respondent resisted and contested the claim of petitioner, which filed reply interalia contending that the petitioner was engaged as daily rated beldar w.e.f. 26-7-1999, who was working as such with certain absence and the petitioner did not complete 240 days of service preceding 12 calendar month and that the petitioner was engaged against the specific period and on completion of the said works, the engagement of the petitioner had automatically come to an end w.e.f. 26-5-2000 and has not attained the status of temporary workman and as such no notice was required to be served upon the petitioner and that no junior workmen were retained by the respondent and that the petitioner has no right to be continued in service as there is no work and funds available with the respondent and as such prayed for the dismissal of claim petition as prayed for.

4. No rejoinder filed. The following issues were framed by this Court on 26-10-2005.

1. Whether the retrenchment of services of Shri Jai Dutthy Executive Engineer, Electrical Sub Division, Saproon, Solan w.e.f. 26-5-2000 is legal and void? ..OPP.
2. If issue no.1 is proved in affirmative, whether the petitioner is entitled to relief claimed? ..OPP.
3. Relief.

5. I have heard the learned counsels for the parties and have gone through the record of the case.

6. For the reasons to be recorded hereinafter while discussing issues for determination my findings on the aforesaid issues area as under.

- Issue No.1 : No.
- Issue No.2 : Entitled for reinstatement in service alongwith seniority and continuity but without back wages.
- Relief : Reference answered in affirmative per operative part of award.

#### REASONS FOR FINDINGS

##### Issues No. 1 :

7. Coming to this issue, the petitioner has examined himself as PW-1, who has stated that he was engaged by respondent in August, 1999 at Oachghat, who was removed form service on 26-5-2000, who worked for more than 240 days during his employment. No notice nor retrenchment compensation has been paid to him when he was removed and two persons were working with him are retained and he was told by the JE that they would call him as and when the work would be started.

8. To rebut the case of the petitioner, the respondent examined Er. Vijay Kachroo, SDO Solan, who has stated that he has been posted as SDO in Sub Division No.3 since March 2006 and the petitioner was engaged as beldar on 26th July, 1999, who worked upto 31st May, 2000 against different works, who worked for 125 days in 1999 and 137 days in 2000 with breaks and proved the mandays chart Ex. RA and the petitioner was removed from service after serving due notice Ex. RB and the work against which the petitioner was engaged were completed and the services were terminated as per notice Ex. RB and the petitioner was engaged against various work as per detail Ex. RC.

9. The case of the petitioner is that he being a daily wages beldar having worked for more than 240 days in a calendar year and his termination without notice under section 25-F of the Industrial Disputes Act, 1947 and payment of compensation is illegal and as such he is entitled for reinstatement in service.

10. On the contrary, the respondent contends that the petitioner is not entitled to any benefits under the Industrial Disputes Act, 1947 as he has not completed 240 working days in a calendar year preceding his retrenchment. Moreover, the services of the petitioner were engaged for specific purpose and for specific period, who was removed from service after serving a notice, hence the petitioner is not entitled to any relief under the Industrial Disputes Act, 1947.

11. I have considered the respective contention of both the parties and have scrutinized the record of the case.

12. After the close scrutiny of the record of the case, it is clear that the petitioner was engaged by the respondent department as daily wages beldar in the year 1999 who worked for 125 days in the year 1999 and 135 days in 2000 meaning thereby that he has completed 260 working days preceding his termination as per mandays chart Ex. RA. No doubt, that the respondent has tried to establish on record that notice Ex. RB was served upon the petitioner but it remains a fact that no notice under section 25-F of the Industrial Disputes Act, 1947 was served upon the petitioner as no notice for one month nor compensation in lieu thereof was served upon the petitioner at the time of his retrenchment. Obviously therefore, it is clear that the petitioner has proved on record that he was illegally and wrongly terminated from service without the requirement of law as envisaged under section 25-F of the ID Act, 1947 and as such I have no hesitation in holding that the retrenchment of services of the petitioner by the Executive Engineer, Saproon Solan w.e.f. 26.5.2000 is illegal and unjustified and as such this issue is decided in favour of petitioner and against the respondent.

*Issue No. 2 :*

13. Since I have held under issue no.1 above, that the services of the petitioner were illegally terminated by the respondent w.e.f. 26.5.2000 without complying with the provisions of section 25-F of the Industrial Disputes Act, 1947 hence the petitioner is held entitled for reinstatement in service with seniority and continuity. However, the petitioner is not entitled to back wages as he has not placed any material on record to substantiate that he was not gainfully employed after his retrenchment. Accordingly, issue no.2 is decided in favour of petitioner and against the respondent.

#### RELIEF

As a sequel to my above discussion and findings on issue no. 1 & 2, the claim of the petitioner is succeeds and is hereby allowed and as such the reference is answered in affirmative and the petitioner is ordered to be reinstated in service forthwith with seniority and continuity in service. However, the petitioner is not entitled to back wages as he has not placed any material on record to substantiate that he was not gainfully employed after his retrenchment. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open court today on this 30th Day of March 2009 in the presence of parties counsels.

J. S. MAHANTAN,  
Presiding Judge,  
Industrial Tribunal-cum-Labour court, Shimla.

**In the Court of Jagmohan Singh Mahantan, Presiding Judge, Industrial Tribunal-cum-Labour Court Shimla**

Ref. No. : 24 of 2003.

Instituted on : 4-2-2003.

Decided on: 30-3-2009.

Shri Kewal Ram S/o Shri Krishan Dutt, R/o Village Kodhilia, P.O. Durgapur, District Shimla, H.P.

..Petitioner.

*Versus*

1. The Divisional Manager, HPSFC, Forest Working Division Shimla Office at Nigam Vihar, Shimla, H. P.  
..Respondent.

*Reference under section 10 of the Industrial Disputes Act, 1947.*

For petitioner : Shri J.R Sharma, Ld. Csl.  
For respondent : Shri Trilok Chauhan, Ld. Csl.

#### AWARD

1. The following reference has been received from appropriate government by this court for adjudication:

**“Whether the termination of the services of Shri Kewal Ram S/o Shri Krishan Dutt by the Divisional Manager, Forest Working Division, Shimla, HP w.e.f. December, 1993 without complying with the provisions of Industrial Disputes Act, 1947 is proper and justified? If not, what relief of service benefits and amount of compensation the aggrieved workman is entitled to?”**

2. The petitioner has filed a claim asserting therein that he was initially engaged as daily wages beldar in the month of October, 1991 by the respondent and that after his appointment, the petitioner worked under the respondent with certain artificial breaks till December, 1993 and then the services of the petitioner have been terminated without assigning any reason and that the petitioner had completed 240 days in 12 calendar months preceding his oral and illegal termination and that the petitioner has unblemished record of service, who never gave any opportunity of complaint and that the petitioner made several requests seeking reemployment by visiting the office of the respondent number of times but to no avail and that the respondent while terminating the services of the petitioner has grossly and palpably violated the well settled principle of law and that the respondent terminated the services of the petitioner without serving requisite notice in accordance with law and that the respondent has failed to pay retrenchment compensation on account of service rendered by him which is bad in the eyes of law and that the respondent retained fresh hands and never offered employment to the petitioner and that the respondent is required to maintain the seniority list of the workmen and to offer employment but the respondent has failed to discharge their duties and as such prayed for reinstatement with all consequential service benefits including back wages, hence this claim.

3. The respondent resisted and contested the claim of petitioner, which filed reply interalia raising preliminary objections of maintainability, time barred and the petitioner had not come to the Court with clean hands. On merits, it is contended that the services of the petitioner were never terminated by the respondent but he left the job of his own. It is denied that the petitioner made several requests for seeking reemployment and visited the office of the respondent and as such prayed for the dismissal of the claim petition.

4. In the rejoinder, the petitioner controverted the assertions made in the reply and reaffirmed and reiterated the averments of the petition.

5. The following issues were framed by this Court on 23-10-2008.

1. Whether the termination of services of petitioner by respondent w.e.f. December, 1993 without complying with the provisions of Industrial Disputes Act, 1947 is proper and justified? ..OPP
2. If issue no.1 is not proved, to what relief of service benefits the petitioner is entitled to? ..OPP
3. Whether the claim petition is not maintainable as alleged? ..OPR
4. Whether the claim is time barred ? ..OPR
5. Whether the petitioner left the job in December, 1993 of his own? ..OPR
6. Whether the claim is vague as alleged and the petitioner has not come with clean hands, as alleged? ..OPR
7. Relief.

6. I have heard the learned counsels for the parties and have gone through the record of the case.



7. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings on the aforesaid issues are as under.

- Issue No. 1 : No.  
 Issue No. 2 : Entitled for reinstatement in service alongwith seniority and continuity but without back wages.  
 Issue No. 3 : No.  
 Issue No. 4 : No.  
 Issue No. 5 : No.  
 Issue No. 6 : No.  
 Relief : Reference answered in affirmative per operative part of award.

#### REASONS FOR FINDINGS

##### *Issue No. 1 :*

8. Coming to issue no.1, the petitioner has examined himself as PW-1, who has stated that he was appointed as daily rated beldar in the Forest Working Division, Shimla *w.e.f.* October, 1991 and continued to work in the department till December, 1993. His services were terminated orally in the month of December, 1993. He worked for more than 240 days in a calendar year and no notice nor retrenchment compensation was given to him. He approached the authorities for reengagement but all in vain and his juniors S/Shri Tulsi Ram, Gopal Dass and Jitender Kumar are still working with the respondent, who has not left the job of his own and as such prayed for reinstatement in service with all consequential benefits alongwith back wages.

9. To rebut the case of the petitioner, the respondent examined RW-1 Shri Rajesh Jeka, Divisional Manager, who has stated that the petitioner was engaged on daily wages in Shimla Division in October, 1991, who served upto December, 1993 and then the petitioner left the job and the dispute raised by the petitioner after seven years and the petitioner has not requested the respondent for his reengagement and no junior to the petitioner has been engaged and proved the mandays chart of the petitioner Ex. RA.

10. The case of the petitioner is that he being a daily wages beldar having worked for more than 240 days, whose termination without notice and compensation is illegal and as such he is entitled for the protection of section 25-F of the Industrial disputes Act, 1947.

11. On the contrary, the respondent contends that the petitioner is not entitled to any benefits under the Industrial Disputes Act, 1947 as he was not removed by the respondent, who left the job of his own.

12. I have considered the respective contention of both the parties and have scrutinized the record of the case.

13. After the close scrutiny of the record of the case, it stands proved from mandays chart Ex. PA placed on record that the petitioner has completed 92 days in 1991, 364 days in 1992 and 325 days in 1993, who was terminated from service without serving any notice under section 25-F of the ID Act, 1947 and even no compensation was paid to him at the time of his removal. It is fully proved on record that the petitioner had completed 240 working days in a calendar year preceding his termination and as such his retrenchment without notice and compensation is bad in law. **Section 25-F of the 'Act' provides that:**

**25-F. CONDITIONS PRECEDENT TO RETRENCHMENT OF WORKMEN.—No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until—**

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;
- (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent of fifteen days' average pay (for every completed year of continuous service) or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate government (or such authority as may be specified by the appropriate Government by notification in the Official Gazette.)

14. After the close scrutiny of section 25-F, it is clear that termination of services of the petitioner, who has worked for more than 323 days in a preceding year as is evident from the mandays chart Ex. PA and his termination without complying with the provisions of section 25-F of the Industrial Disputes Act, 1947 and without payment of compensation is improper and unjustified and as such, the termination amounts to illegal retrenchment contravening the provisions of section 25-F of the I.D Act, 1947. In the instant case, the petitioner has proved on record that he had worked for more than 240 days in a calendar year preceding his termination as is evident from Ex. RA placed on record and moreover, no notice nor any compensation was paid to the petitioner at the time of his termination and obviously therefore, I am of the firm opinion that no notice nor any retrenchment compensation was paid to the petitioner by the respondent at the time of his termination and as such the termination of petitioner by the respondent w.e.f. December, 1993 is illegal and unjustified without complying with the provisions of ID Act, 1947. Accordingly, issue no.1 is decided in favour of petitioner and against the respondent.

*Issue No. 2 :*

15. Since I have held under issue no.1 above, that the services of the petitioner has been illegally terminated by the respondent without notice or payment of compensation, hence the petitioner is held entitled to reinstatement in service with seniority and continuity. However, the petitioner is not entitled to back wages as he has not placed any material on record to substantiate that he was not gainfully employed after his retrenchment. Accordingly, issue No.2 is decided in favour of petitioner and against the respondent.

*Issue No. 3 :*

16. In order to prove this issue, no evidence was led by the respondent nor it was pressed during the course of arguments. However I find nothing wrong with this claim of the petitioner which is perfectly maintainable in the present form. Accordingly, issue No.3 is decided in favour of petitioner and against the respondent.

*Issue No. 4 :*

17. In support of this issue, no evidence was led by the respondent being the legal issue. However, I have scrutinized the record of the case and observed that there is no limitation under the I.D Act, 1947 as it was held by their lordship of **Hon'ble Supreme Court as reported in (1999) 6 SCC 82 case titled as Ajayab Singh Vs. Sirhind Co-operative Marketing-cum-Processing Service Society Limited and Another.** In which it was held that:—

**“the provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay, if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”**

And as such on the strength of this ruling, it can safely be concluded that this petition is not time barred. Accordingly, issue No.4 is decided against the respondent and in favour of the petitioner.

*Issue No. 5 :*

18. In support of this issue, no evidence was led by the respondent nor it was pressed during the course of arguments. However, it is well settled in **State of HP & Others Vs. Bhatag Ram & Another as reported in latest HLJ 2007 (HP) 903** in which it was held that:—

**“Plea of abandonment of job- merely raising the plea of abandonment is nothing but has to be established on the basis of facts. No facts led to substantiate the plea.”**

Thus, having regard to no evidence on this issue of abandonment, it can safely be concluded that the petitioner has not left the job of his own. Accordingly, the issue is decided in favour of petitioner and against the respondent.

*Issue No. 6 :*

19. In support of this issue, no evidence was led by the respondent nor it was pressed during the course of arguments. In view of no such evidence on record, it can safely be concluded that the claim is not vague and the petitioner has come to the Court with clean hands. Accordingly, the issue is decided in favour of the petitioner and against the respondent.

## RELIEF

As a sequel to my above discussion and findings on issue no.1 to 6, the claim of the petitioner succeeds and is hereby allowed and as such the reference is answered in affirmative and the petitioner is ordered to be reinstated in service forthwith with seniority and continuity in service. However, the petitioner is not entitled to back wages as he has not placed any material on record to substantiate that he was not gainfully employed after his termination. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open court today on this Day of 30th March 2009 in the presence of parties counsels.

J. S. MAHANTAN,  
Presiding Judge,  
Industrial Tribunal-cum-Labour court, Shimla.

**In the Court of Jagmohan Singh Mahantan, Presiding Judge, Industrial Tribunal-cum-Labour Court Shimla**

Ref No. : 173 of 2002

Instituted on : 21-6-2002

Decided on : 30-3-2009

1. Diwakar Dutt, S/o Shri Durga Dass, R/o Village Jandhar, P.O. Basantpur, Tehsil Sunni, District Shimla, H. P.

2. Dharam Parkash S/o Shri Parma Nand R/o Village Jandhar, P.O Basantpur, Tehsil Sunni, District Shimla, H. P. . .Petitioners.

*Versus*

1. The Executive Engineer, I&PH Division Sunni, Tehsil Sunni, District Shimla, H. P.

2. The Sub-divisional Officer, I&PH Division Gumma, Tehsil Sunni, District Shimla, H. P. . .Respondent.

*Reference under section 10 of the Industrial disputes Act, 1947.*

For petitioner : Shri M.S Kanwar, Ld. Csl.  
For respondent : Shri Jagdish Kanwar, Ld. DDA.

**AWARD**

1. The following reference has been received by this Court from appropriate government for adjudication:—

2. The petitioner Shri Diwakar has filed a separate claim asserting therein that he was initially appointed as daily rated beldar in the year 1995 with the respondent, who worked till 25-3-1997 with certain artificial and fictional breaks and then his services were terminated without assigning any reason and that the petitioner had completed 240 days in a calendar year and that the petitioner has unblemished record of his service, who never gave any opportunity of complaint and that the petitioner made several requests seeking reemployment by visiting the office of the respondent but in vain and even the respondents recruited fresh hands and juniors to the petitioner into the employment that the respondent while terminating the services of the petitioner have grossly and palpable violated the well settled principles of law as well as the principle of section 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 and that the petitioner belongs to a poor strata of the society having no source of income and that the respondent never chargesheeted the petitioner before the termination and that the respondents have also failed to tender retrenchment compensation on account of service rendered by the petitioner for which he was entitled and that the petitioner was entitled to prior notice even if there was no work available with the respondent that too in compliance of principles of last come first go but the respondents acted totally in violation of law and that the action of the respondent not only in

violation of section 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 but the action is also totally in violation of provisions of Articles 14, 16 and 21 of the Constitution of India and as such prayed for reinstatement in service with retrospective effect alongwith full back wages, seniority and other consequential benefits, hence this claim.

3. The petitioner Shri Dharam Parkash has also filed separate claim and supported the entire claim of the petitioner Shri Diwakar Dutt.

4. The respondents resisted and contested the claim of the petitioners, which filed separate reply interalia raising preliminary objections of maintainability and barred by limitation. On merits, it is contended that the petitioners were engaged in the year 1-1-1997, who worked for 75 days as per annexure A. It is denied that the petitioners have completed 240 days in any calendar year. It is contended that the services of the petitioners have not been terminated by the respondent, who themselves abandoned the job, hence prayed for the dismissal of the claim.

5. No rejoinder filed. On the pleadings of the parties, the following issues were framed by this Court on 12.9.2003.

1. Whether the plea of respondent no.1 that the petitioners had abandoned the job after March, 1997 is legal of justified? ..OPR
2. In case issue no.1 is not proved in affirmative, whether the petitioners were retrenched in violation of section 25-G, 25-H of the ID Act, 1947 .. OPR
3. Relief.

6. I have heard the Learned Counsels for the parties and have also gone through the record of the case.

7. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings on the aforesaid issues are as under:—

Issue No.1 : Yes.  
Issue No.2 : No.  
Relief : Reference answered in negative per operative part of the award.

#### REASONS FOR FINDINGS

##### *Issue No. 1 :*

8. In order to prove this issue, the respondent has examined RW-1 Er. Laiq Ram, who has stated that the petitioner Diwakar remained on duty for three months *w.e.f.* 1-1-1997 to March, 1997, who worked for 75 days and proved the mandays chart Ex. RA and petitioner Dharam Parkash also worked for three months *w.e.f.* Jan. to March, 1997 and proved the mandays chart Ex. RB and then the petitioners left the job of their own.

9. To prove the case, the petitioners have also examined two PWs in all. PW-1 Shri Diwakar has stated that he was engaged as daily wages beldar by the respondent on November, 1995 and worked till December, 1995 and then he was reengaged on July-August, 1996 and worked till March, 1997 and then he was not called by the respondent despite repeated requests. No notice was given to him and Shri Mohan Lal also worked with him, who is still working with the respondent and Smt. Saroj was junior to him, who is still working with the respondent and as such prayed for reinstatement in service with all consequential benefits including back wages.

10. PW-2 Shri Dharam Parkash has stated that he was engaged as beldar on daily wages by the respondent on November, 1995 and worked till December, 1995 and then reengaged in July- August, 1996 and worked till March, 1997 and supported the entire deposition of PW-1 Shri Diwakar.

11. The case of the petitioners is that they being the daily wages beldars have worked for more than 240 days in a calendar year preceding to their termination and they have not left the job of their own but they were terminated from service without any notice or compensation and even juniors to them are still continuing in the job and they are also entitled to their reinstatement in service with all benefits.

12. On the contrary, the respondent contends that the petitioners have never completed 240 working days in a calendar year preceding their abandonment and the petitioners are never terminated from job, who abandoned their job themselves and as such they are not entitled to any relief as prayed for by them.

13. I have considered the respective contention of both the parties and have scrutinized the record of the case.

14. After the close scrutiny of the record of the case, it remains a fact that the petitioners have not completed 240 working days in a calendar year preceding their termination as per mandays chart Ex. RA and Ex. RB placed on record. There is nothing on record which could show that they had put in more than 240 working days in a calendar year preceding their termination. It is well settled in **AIR 2006 S.C. 110 case titled as Surindernagar District Panchyat V/s Dayabhai Amarsinh** in which it was held that:—

**“In case workman claims to have worked for more than 10 years as daily wager—Apart from oral evidence workman has not produced any evidence to prove fact that he has worked for 240 days---No proof of receipt of salary or wages or any record or order in that regard was produced: no co-worker was examined; muster roll produced by employer has not been contradicted—Workman has failed to discharge his burden that he was in employment for 240 days during preceding 12 months of date of termination of his service—Workman not entitled for protection of Section 25-F before his service was terminated.”**

In the instant case, the petitioners have failed to prove on record that they have put in more than 240 days in a calendar year preceding their termination, who worked for 75 and 77 days as per Ex. RA and RB placed on record. It is also proved on record that the respondent had given the notice to the petitioner when they left the job as stated by RW-1 Shri Liaq Ram in his cross-examination. The petitioners have failed to prove that they have put in more than 240 working days in any calendar year preceding their termination and no termination order was produced by the petitioners to prove that they have not been allowed to work by the respondent meaning thereby that the petitioners were not terminated by the respondent at any point of time, who left the job of their own and as such I am of the firm opinion that the services of the petitioners have not been terminated by the respondent, who abandoned the job themselves after March, 1997 without any intimation to the respondent. Accordingly issue no.1 is decided in favour of respondent and against the petitioners.

*Issue No. 2:*

15. In support of this issue, there is nothing on record which could show that the juniors to the petitioners are still working with the respondent in violation of section 25-G and 25-H of the Industrial Disputes Act, 1947. The petitioners have failed to prove on record that their juniors are still working with the respondent. Moreover, no record has been summoned by the petitioners in order to show that the alleged juniors of petitioners joined when in order to assess their seniority in the department and whether they are still continuing in the department. In the absence of no such evidence on record to show the seniority list of the petitioners and the other workmen, it can safely be concluded that no juniors to the petitioners are working in the department/respondent is proved on record and therefore the petitioner can not take benefit of provisions of section 25-G & H of Industrial Disputes Act, 1947. Accordingly, issue no.2 is decided in favour of the respondent and against the petitioners.

#### RELIEF

As a sequel to my discussion and findings on issue No. 1 & 2 above, the claim of the petitioners fails and is hereby dismissed and as such the reference is ordered to be answered accordingly. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open court today on this 30th day of March 2009 in the presence of parties counsels.

J. S. MAHANTAN,  
Presiding Judge,  
Industrial Tribunal-cum-Labour court, Shimla.

**In the Court of Jagmohan Singh Mahantan, Presiding Judge, Industrial Tribunal-cum-Labour Court Shimla**

Ref. No. : 73 of 2006

Instituted on : 30-5-2006

Decided on : 24-3-2009

Roshan Lal S/o Shri Sarnu Ram R/o Village Suem, P.O Deothi, Tehsil Rampur, District Shimla, H. P.

..Petitioner.

The Executive Engineer, I&PH Division Rampur, District Shimla, H. P.

..Respondent.

*Reference under section 10 of the Industrial Disputes Act, 1947.*

For petitioner : Shri Shashi Shirshoo, Ld. Csl.  
For respondent : Shri Jagdish Kanwar, Ld. DDA.

#### AWARD

1. The following reference has been received from appropriate government by this court for adjudication:

**“Whether the termination of the services of Shri Roshan Lal S/o Shri Saan Dass workman by the Executive Engineer I&PH, Division Rampur, Distt. Shimla, HP w.e.f. 6.7.1999 without complying the provisions of Industrial disputes Act, 1947 is proper and justified? If not, what relief of service benefits and amount of compensation, the above aggrieved workman is entitled to?”**

2. The petitioner has filed a claim asserting therein that he was engaged as daily wages beldar on muster roll basis w.e.f. April, 1996 in Deothi section, who continued as such till July, 1999 and the services of the petitioner were terminated w.e.f. August, 1999 by the respondent and that the services of the petitioner were terminated orally and no notice under section 25-F of the Industrial Disputes Act, 1947 was served upon him nor retrenchment compensation was paid to the petitioner in lieu of continuous service rendered by the petitioner and that many juniors are retained on work by the respondent and they are still continuing with the respondent department and many fresh hands have been recruited by the respondent which is against the principle of last come first go and that the petitioner has completed more than 240 days in each calendar year and has also attained the status of temporary employee in view of the section 25-B of the Act as no enquiry was conducted nor any charge sheet was served upon the petitioner prior to retrenching the services of the petitioner and that the respondent flouted all canons of law and abruptly dispensed with the services of the petitioner without assigning any reason which is totally illegal, arbitrary and unconstitutional and as such prayed for reinstatement in service with continuity, seniority alongwith full back wages, hence this claim.

3. The respondent resisted and contested the claim of petitioner, which filed reply interalia raising preliminary objections of maintainability, delay and latches, abandonment estoppels and the department is not an industry. On merits, it is contended that the petitioner was engaged as daily wages beldar on muster roll w.e.f. July, 1995 and worked till 6th July, 1999 intermittently and the petitioner has not reported on work in the months of 12/95, 1/96, 3/96, 5/96, 4/97, 10/97 and 3/99. It is denied that the services of the petitioner were terminated by the respondent department as the petitioner himself has abandoned the job and the mandays chart of the petitioner is annexure R-1, hence no notice was required to be served upon the petitioner. The petitioner remained absent at his own and the petitioner raised the Industrial disputes after six years of his abandonment and as such prayed for the dismissal of claim petition.

4. No rejoinder filed. The following issues were framed by this Court on 24.4.2007.

1. Whether the service of the petitioner has been illegally terminated by the respondent without complying the provisions of ID Act, 1947? If so, its effect? ..OPP.
2. If issue no.1 is proved in affirmative, to what relief, the petitioner is entitled to? ..OPP.
3. Whether the petitioner has no locus standi and no cause of action and the petition is not maintainable in the present form? ..OPR.
4. Relief.

5. I have heard the learned counsels for the parties and have gone through the record of the case.

6. For the reasons to be recorded hereinafter while discussing issues for determination my findings on the aforesaid issues area as under.

Issue No.1 : Yes.  
Issue No.2 : Entitled for reinstatement in service alongwith seniority and continuity but without back wages.  
Issue No.3 : No.  
Relief : Reference answered in affirmative per operative part of award.

## REASONS FOR FINDINGS

*Issue No. 1 :*

7. Coming to issue No.1, the petitioner has examined himself as PW-1, who has stated that he was engaged as beldar in 1995 at Deothi section where he worked till July, 1999, who was removed from service in August, 1999. No notice nor compensation has been given to him and he approached the respondent for reengagement many times but he was not reengaged and after his removal, Smt. Seema Devi and Shri Vijay Singh have been employed in 1998 who are still working and as such prayed for reinstatement with all benefits.

8. To rebut the case of the petitioner, the respondent examined Er. D.D Mishra who has stated that he is posted as an Assistant Engineer with the respondent since 2008. The petitioner was engaged as daily wages beldar in the month of July, 1995, who worked as such till July, 1999 and proved the mandays chart of the petitioner Ex. RA. The petitioner has left the job of his own in July, 1999, who was never terminated by the respondent and the petitioner raised an Industrial dispute after six years without sufficient cause and as such the petitioner is not entitled to any relief. 9. The case of the petitioner is that he being a daily wages beldar having worked for more than 240 days in many years and his termination without notice and compensation is illegal and as such he is entitled for the protection of section 25-F of the Industrial Disputes Act, 1947.

10. On the contrary, the respondent contends that the petitioner is not entitled to any benefits under the Industrial Disputes Act, 1947 as he has not completed 240 working days in a calendar year preceding his abandonment. Moreover, the petitioner was not removed from service, who left the job of his own will, hence the petitioner is not entitled to any relief under the Industrial disputes Act, 1947.

11. I have considered the respective contention of both the parties and have scrutinized the record of the case.

12. After the close scrutiny of the record of the case, it remains a fact that the petitioner has completed more than 240 days of service, who worked for 156 days in 1995, 256 days in 1996, 244 days in 1997, 317 days in 1998 and 124 days in 1999 as is evident from the mandays chart Ex. RA placed on record which fact is also admitted by RW-1 Shri D.D Mishra in his cross examination that the petitioner has completed 240 working days in the year 1996, 1997 and 1998. The witness has further admitted that no notice nor compensation was paid to the petitioner by the respondent. It is well settled in case titled as **State of HP & Ors Vs Bhatag Ram & Anr. as reported in latest HLJ 2007 (HP) 903** in which it was held that :

**“Continuing of 240 days not necessary in 12 calendar months. It is not necessary to workman to complete 240 days during 12 months for taking the benefits of section 25-G & 25-H of the Act.”**

13. The perusal of this ruling makes it clear that it is not necessary that the workman must complete 240 working days in a preceding calendar year of his termination. However, if he completes 240 working days in any calendar year preceding his termination that period will be counted for reckoning of requisite period of working days to cover his case under section 25 F of the Industrial Disputes Act, 1947. In the instant case, the petitioner has proved on record that he worked for more than 240 days in many calendar years as is evident from Ex. RA and moreover, no notice nor any compensation was paid to the petitioner at the time of his termination and obviously therefore, I am of the firm opinion that the termination of the services of the petitioner without notice under section 25-F of the Industrial Disputes Act, 1947 and retrenchment compensation is improper and unjustified. No doubt that the respondent has tried to establish on record that the petitioner has abandoned the job of his own but there is nothing on record which could show that the petitioner himself is responsible for losing his job. I find no force in this contention as it was held in case titled as **State of HP & Others Vs. Bhatag Ram & Another as reported in latest HLJ 2007 (HP) 903** in which it was held that:—

**“Plea of abandonment of job- merely raising the plea of abandonment is nothing but has to be established on the basis of facts. No facts led to substantiate the plea.”**

Thus, having regard to the entire evidence on record and having the fact that the petitioner had completed 240 working days in many calendar years, hence I have no hesitation in coming to the conclusion that the services of the petitioner have been illegally terminated by the respondent *w.e.f.* 6-7-1999 without complying with the provisions of Industrial disputes Act, 1947. Accordingly, issue no.1 is decided in favour of petitioner and against the respondent.

*Issue No. 2 :*

14. Since I have held under issue no.1 above, that the services of the petitioner have been illegally terminated by the respondent without notice or payment of compensation, hence the petitioner is held entitled to

reinstatement in service with seniority and continuity from the date of illegal retrenchment. However, the petitioner is not entitled to back wages as he has not placed any material on record to substantiate that he was not gainfully employed after his retrenchment. Accordingly, issue no.2 is decided in favour of petitioner and against the respondent.

*Issue No. 3 :*

15. In order to prove this issue, no evidence was led by the respondent nor it was pressed during the course of arguments. However I find nothing wrong with this petition which is perfectly maintainable in the present form holding that the petitioner being aggrieved by his illegal retrenchment without notice and compensation has got locus standi to file this petition and has also enforceable cause of action to file this claim petition. Accordingly, issue no.3 is decided in favour of petitioner and against the respondent.

#### RELIEF

As a sequel to my above discussion and findings on Issue No.1 to 3, the claim of the petitioner succeeds and is hereby allowed and as such the reference is answered in affirmative and the petitioner is ordered to be reinstated in service forthwith with seniority and continuity in service. However, the petitioner is not entitled to back wages as he has not placed any material on record to substantiate that he was not gainfully employed after his retrenchment. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open court today on this 24th Day of March 2009 in the presence of parties.

J. S. MAHANTAN,  
*Presiding Judge,*  
*Industrial Tribunal-cum-Labour court, Shimla.*

**In the Court of Jagmohan Singh Mahantan, Presiding Judge, Industrial Tribunal-cum-Labour Court Shimla**

Ref No. : 137 of 2001

Instituted on : 27-7-2001

Decided on : 23-3-2009

Dinesh Kumar, S/o Shri Kanshi Ram R/o Village Shaug, P. O. Ganagughat, Tehsil Arki, District Solan, H. P.  
*..Petitioner.*

*Versus*

The Chairman Arki Tehsil Truck Operators Union, Darlaghat, Tehsil Arki District Solan, H.P.  
*..Respondent.*

*Reference under section 10 of the Industrial Disputes Act, 1947.*

For petitioner : Shri M.L Sharma, Ld. Csl.

For respondent : Shri Rajkumar, Ld. Csl.

#### AWARD

1. The following reference has been received for adjudication by this Court from the appropriate government:—

**“Whether the termination of services of Shri Dinesh Kumar workman S/o Shri Kanshi Ram by the Chairman, M/s Arki Tehsil Truck Operators Union, Darlaghat Tehsil Arki, District Solan, HP w.e.f. 9.3.2000 without complying the norms of section 25-F/ 25-N of the Industrial Disputes Act, 1947 is fair and justified? If not, to what relief of service benefits, back wages, seniority and amount of compensation Shri Dinesh Kumar is entitled to?”**



2. The petitioner has filed a separate claim asserting therein that he was working as clerk with the respondent with the entire satisfaction and welfare of the respondent w.e.f. October, 1997 and the work of the petitioner was to make the entries of the trucks and for that purpose the entry fee was taken by him from the person who was asked to make the entry of the truck and the whole amount was deposited by the petitioner in the union at Darlaghat and the petitioner was working day and night shift and initially, the petitioner was appointed on the salary of Rs. 1200/- and after every year Rs. 300/- was enhanced in the salary of the petitioner by the respondent and at the time of termination, the petitioner was earning Rs. 2100/- per month and that on 9-3-2000, the services of the petitioner were terminated by the respondent orally without issuing any prior notice and even no compensation was given to the petitioner at the time of his termination which is the violation of section 25-F and 25-N of the Industrial Disputes Act, 1947 and also against the provisions of natural justice and that junior persons to the petitioner S/Shri Dev Raj, Agya Ram, Sanjiv Kumar, Parmod Kumar, Darshan and Mast Ram are still working with the respondent and that the petitioner was working with the respondent regularly since October, 1997, who has completed more than 240 days in each calendar year and also in preceding 12 months, who worked with the respondent for more than 2 ½ years and as such the oral termination of the petitioner is illegal, arbitrary and not sustainable in the eyes of law and as such prayed for reinstatement in service with continuity and seniority including back wages, hence this claim.

3. The respondent resisted and contested the claim of the petitioner, which filed reply interalia contending that the petitioner was working as Chowkidar, who had been deputed to enter the trucks and token fee was being charged by the petitioner in a check post which was opened in November, 1997 and the petitioner was engaged for that specific work and the petitioner has acted against the interest of the union and has not rendered complete day to day accounts and has concealed the income for his personal gain and also kept certain documents with him and as such he is not entitled to any relief. It is denied that the petitioner was working day and night shift and was appointed as clerk and that since the petitioner was engaged for a specific work as a temporary measure engagement, hence the provisions of section 25-F of the ID Act, 1947 are not applicable and that since the engagement of the petitioner and other similar situated persons was made a particular job at a particular check post, hence no one can claim any seniority over the other incumbents and since there is no appointment order nor any conditions of service have been laid down which is just temporary arrangement between the parties and the plea of juniors is not tenable and the check post on which the petitioner was engaged was abolished due to non availability of work and as such the services of the petitioner were not required and the last provisions of last come first go would not be applicable in this case, hence prayed for the dismissal of the claim as prayed for.

4. In the rejoinder, the petitioner controverted the assertions made in the reply and reaffirmed and reiterated the averments of the petition. The following issues were framed on 19-7-2002.

1. Whether the termination of services of the petitioner by the respondent w.e.f. 9-3-2000 without compliance of the provisions of section 25-F and 25-N of the Industrial Disputes Act, 1947 and thus unfair and unjustified? ..OPP.
2. If issue No-1 is proved in affirmative whether petitioner is entitled for compensation and other consequential service benefits including reinstatement? ..OPP.
3. Whether the respondent union is not an Industry within the meaning of section 2(j) of the Industrial disputes Act, 1947 and petition is not maintainable ..OPR
4. Relief.

5. I have heard the Ld. Counsels for the parties and have also gone through the record of the case.

6. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings on the aforesaid issues are as under:—

Issue No. 1 : No.

Issue No. 2 : Not entitled to any relief

Issue No. 3 : No.

Relief : Reference answered in negative per operative part of award.

*Issue No. 1 :*

7. Coming to issue No-1, the petitioner has examined himself as PW-1, who has stated that he was working as a clerk since October, 1997 and was deputed to issue slips to the trucks at different check posts. Initially he was engaged at Darlaghat and then he was posted at Shaug check post and then again posted at Darlaghat whose services were terminated on 9.3.2000 without issuing any notice and without payment of compensation, who worked regularly *w.e.f.* October, 1997 to 9-3-2000 and had completed 240 days service during the period of 12 calendar month preceding the date of termination. His juniors S/Shri Dev Raj, Mast Ram, Agya Ram, Sanjeev Kumar, Parmod Kumar and Nek Ram have been retained and he was working in different check posts during day and night shifts as per orders issued by his superiors and as such prayed for reinstatement in service with all consequential benefits including full back wages and that he is unemployed after his termination.

8. On the contrary, the respondent has examined Shri Bali Ram Sharma, who has stated that he is working as Senior Assistant in Arki Tehsil Truck Operators Union, Darlaghat since Jan. 2000 and he is authorized to make the statement as per authority letter Ex. RW-1/A. The petitioner was engaged as chowkidar at the check post known as Shaug which was established in 1989 and the petitioner was supposed to issue Parchees to the outgoing trucks carrying sand and stones and to check the same. Till the petitioner kept on working satisfactorily, he was being paid wages and later on he started making embezzlement. Though he used to issue Parchees to the outgoing trucks, but he did not deposit the proceeds in the union office and the petitioner was engaged chowkidar temporarily on monthly wages and in the conciliation proceedings, the petitioner had paid a part of the embezzled amount and since the petitioner had indulged in embezzlement, his services were dispensed with and the petitioner filed a false claim and as such prayed for the dismissal.

9. The case of the petitioner is that he was engaged as clerk on the monthly salary of Rs. 1200/- and after every year Rs. 300/- were enhanced in his salary, who has completed more than 240 working days in every calendar year and his juniors are still continuing with the respondent and as such he is entitled for the protection of section 25-F of the Industrial Disputes Act, 1947 and his services is liable to be reengaged along-with all retrospective benefits.

10. On the contrary, the respondents contend that the petitioner was engaged as chowkidar for specific work and since the services of the petitioner was disengaged on completion of work who was appointed according to the need of work and as such, the petitioner has no right to post and moreover the petitioner had indulged in embezzlement, his services were dispensed with and as such he has no right to the post of chowkidar as he has lost the faith of the respondent union.

11. I have considered the respective contention of both the parties and have scrutinized the record of the case.

12. After the close scrutiny of the record of the case, there is no dispute about the engagement of the petitioner, who was engaged by the respondent as chowkidar and not the clerk as claimed by petitioner who failed to prove on record that he was initially engaged as clerk in the check post to issue Parchees to the out going trucks. There is nothing on record which could show that the petitioner has completed 240 working days in any calendar year preceding his termination. Moreover, no record from the office of the respondent was summoned by the petitioner to prove that he had put in more than 240 days of service with the respondent and his juniors are still working with the respondent and as such it does not lie in the mouth of petitioner to say that he had put in more than 240 working days with the respondent and his juniors are still continuing with the respondent. It is well settled in **AIR 2006 S.C. 110 case titled as Surindernagar District Panchyat V/s Dayabhai Amarsinh** in which it was held that:—

**“In case workman claims to have worked for more than 10 years as daily wager—Apart from oral evidence workman has not produced any evidence to prove fact that he has worked for 240 days---No proof of receipt of salary or wages or any record or order in that regard was produced: no co-worker was examined; muster roll produced by employer has not been contradicted—Workman has failed to discharge his burden that he was in employment for 240 days during preceding 12 months of date of termination of his service—Workman not entitled for protection of Section 25-F before his service was terminated.”**

13. Now, turning to the other aspect of the case, it is also clear from the record that petitioner has embezzled certain documents and amount of receipt when he was posted at check post Shaog regarding which the respondent had issued a letter to the petitioner to deposit the embezzled amount which is clear from the letter Ex. PX and the petitioner replied the same as per Ex. PY and the petitioner also handed over the embezzled amount to the respondent before the

Labour-cum-Conciliation Officer during conciliation proceedings. **It is well settled in (2005) 3 SCC 254 case titled as Divisional Controller, KSRTC (NWKRTC) Vs. A.T Mane.** Relevant para 12 is reproduced as under:

**“Coming to the question of quantum of punishment, one should bear in mind that fact that it is not the amount of money misappropriate that becomes a primary factor for awarding punishment; on the contrary, it is the loss of confidence which is the primary factor to be taken into consideration. In our opinion, when a person found guilty of misappropriating the corporations, funds there is nothing wrong in the corporation losing confidence or faith in such a person and awarding a punishment of dismissal.”**

14. Thus, on the strength of the above cited rulings and having regard to the evidence on record, it can safely be concluded that the services of the petitioner has not been illegally terminated by the respondent without any notice or compensation which is legal and justified and the petitioner has failed to prove on record that he has completed more than 240 working days in a calendar preceding his termination and further more there is nothing on record which could show that the juniors to the petitioner are still continuing with the respondent union. Accordingly, this issue is decided against the petitioner and in favour of the respondent.

*Issue No. 2 :*

15. Since, I have held under issue no.1 above, that the services of the petitioner has been legally terminated by the respondent without notice or compensation, hence the petitioner is not entitled to compensation and other service benefits including reinstatement.

Accordingly, the issue No.2 is answered in negative.

*Issue No. 3 :*

16. In support of this issue, no evidence was led by the respondent being the legal issue. However, I find no force in this contention as it was held by the **Full Bench of Hon'ble Supreme Court reported in 1978 (2) SCC 213** in which it was held that the educational institute and research centres are Industries. It was further held by the Hon'ble Supreme Court in case titled **Banglore Water Supply and Sewerage Board Vs. A. Rajappa as reported in 1978 Vol-1 LLJ-349** in which it was held that a University is an Industry particularly with respect to small workers like Mali, Chowkidars, Carpenters etc. and as such on the strength of these judgments, it can safely be concluded that the respondent union is an Industry and governed by the Industrial Disputes Act, 1947. Accordingly, issue No.3 is decided in favour of petitioner and against the respondent.

#### RELIEF

As a sequel to above discussion and findings on issue No-1 to 3, the claim of the petitioner fails and is hereby dismissed and the reference is ordered to be answered in negative. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open court today on this 23<sup>rd</sup> day of March, 2009 in the presence of parties.

J. S. MAHANTAN,  
Presiding Judge,  
Industrial Tribunal-cum-Labour court, Shimla.

**In the Court of Jagmohan Singh Mahantan, Presiding Judge, Industrial Tribunal-cum-Labour Court Shimla**

Ref No : 217 of 2003

Instituted on : 30-7-2003

Decided on : 24-3-2009

Balbir Singh S/o Shri Shayama Nand, R/o Village Baja, P. O. Taklech Tehsil Rampur, District Shimla, H.P.  
..Petitioner.

The Superintending Engineer, HPSEB Circle, Rampur, District Shimla, H. P.

..Respondent.

*Reference under section 10 of the Industrial Disputes Act, 1947.*

For petitioner : Shri Shashi Shirshoo, Ld. Csl.

For respondent : Shri Bhagwan Chand, Ld. Csl.

#### AWARD

1. The following reference has been received for adjudication by this Court from the appropriate government:—

2. The petitioner has filed a claim asserting therein that he joined as daily waged beldar on muster roll basis in the year 1980 in Electrical Division, Rampur Bushehr and worked in various sections at different places till November, 1996 and that in the month of November, 1996 while on work the petitioner sustained fracture in the right arm as well as grievous injuries on other part of body when the electric poles were being carried to Darshal village and due to these injuries, the petitioner remained out of job for the treatment and on account of these injuries, the petitioner has suffered 42% disability and on treatment the whole expenses were borne out by the petitioner and the respondent did not pay the treatment amount to the petitioner and that when the petitioner came back to join his duties, he was told that his services were no more required and the services of the petitioner have been terminated w.e.f. December, 1996 and the petitioner visited the office of respondent several times but to no avail and that the petitioner continuously worked with some fictional breaks for more than fifteen years, whose services have been orally terminated by the respondent without serving any notice under section 25-F of the Industrial disputes Act, 1947 as well as the certified standing orders of HPSEB in which 10 days prior notice is required to be served upon the workman and that many junior workmen are still continuing on work with the respondent and many fresh workmen have been engaged on work, who are still continuing which is against the principle of last come first go and that no procedure is followed under section 25-F of the ID Act, 1947 as well as certified standing orders which is totally illegal and as such prayed for reinstatement in service with all consequential benefits including back wages, hence this claim.

3. The respondent resisted and contested the claim of the petitioner, which filed reply interalia raising preliminary objections of maintainability, estoppel and time barred. On merits, it is contended that the petitioner was engaged by the department w.e.f. 3-5-1991, who worked with the department till 24-6-1996 with fictional breaks, who was engaged against specific work as and when the work was available with the respondent. It is denied that the petitioner sustained injuries during his employment as no electrification work was ever executed by the respondent department during November, 1996 and that the petitioner never visited the office of the respondent for his reengagement. It is also denied that the petitioner had worked with the respondent continuously for fifteen years whose services have been come to an end on the completion of specific work and the petitioner had not completed 240 working days in any calendar year and as such there is no violation of section 25-F of the ID Act, 1947 as well as Rule 14(2) of the standing orders of HPSEB. It is denied that the juniors to the petitioner are still working with the respondent and as such prayed for dismissal of the petition.

4. No rejoinder filed. The following issues were framed on 24-3-2006.

1. Whether the petitioner has been illegally terminated by the respondent without any notice and compensation? If so, its effect? ..OPP.

2. If issue no.1 is not proved in affirmative to what relief, the petitioner is entitled to? ..OPP

3. Whether the petition in the present form is not maintainable? ..OPR.

4. Relief

5. I have heard the Ld. Counsels for the parties and have also gone through the record of the case.

6. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings on the aforesaid issues are as under:—

Issue No. 1 : No

Issue No. 2 : Not entitled to any relief

Issue No. 3 : No  
Relief : Reference answered in negative per operative part of award

### REASONS FOR FINDINGS

#### *Issue No-1 :*

7. Coming to issue No-1, the petitioner has examined two PWs in all. The petitioner stepped into the witness box as PW-1, who has stated that he was engaged by the respondent in 1980 at Taklech in electrical Division where he remained upto November, 1996 and then he was taken to Rampur for treatment in Govt. Hospital where he remained under treatment for more than one year as he received the fracture on right arm whose permanent disability was assessed to be 42% and the respondent had not paid any medical expenses of the treatment and after his recovery, he had gone to the respondent for his reengagement many times but he was not taken back. No notice nor compensation was paid to him and about 10-15 people S/Shri Roshan, Sunder Singh, Kaul Ram and Jai Lal who were juniors to him are still working with the respondent and as such prayed for reinstatement with all benefits.

8. PW-2 Er. Kuku Sharma, JE has stated that he has brought the muster roll from May, 1991 to June, 1996 and proved the muster rolls Ex. PA-1 to PA-11 and the petitioner has not worked for 240 days in any of the year.

9. On the contrary, the respondent has examined Er. B.D Sharma, SDO Taklech, who has stated that the petitioner was engaged in Taklech Sub Division in 1991, who worked till 24-6-1996 and proved the mandays chart of the petitioner Ex. RA and the work was completed in June, 1996 and the petitioner was removed and they engaged the petitioner when the work was available and the department has not given any notice to the petitioner as the work for which the petitioner was engaged was specific and no new person has been engaged by the department after 1996.

10. The case of the petitioner is that he was engaged as beldar on daily wages by the respondent department, who has completed more than 240 working days in every calendar year and his juniors are still continuing with the respondent and as such he is entitled for the protection of section 25-F of the Industrial Disputes Act, 1947 and his services is liable to be reengaged along-with all retrospective benefits.

11. On the contrary, the respondents contend that the petitioner was engaged as casual labourer for a seasonal work, who has not completed 240 working days in any calendar year and since the services of the petitioner was disengaged on completion of work who was appointed according to the need of work and as such, the petitioner has no right to post being casual labourer.

12. I have considered the respective contention of both the parties and have scrutinized the record of the case.

13. After the close scrutiny of the record of the case, it remains a fact that the petitioner has not completed 240 working days in any calendar year preceding his termination, who worked for 80 days in 1991, 130 days in 1995 and 66 days in 1996 as per mandays chart Ex. RA. There is nothing on record which could show that the petitioner was engaged as beldar on daily wages having completed 240 working days in a calendar year preceding his termination. The petitioner has also failed to prove that his juniors are still continuing with the respondent as RW-1 Er. B.D Sharma SDO Taklech has stated that no junior to the petitioner was engaged by the respondent and the services of the petitioner were dispensed with in the year 1996 on the completion of work. Moreover, the respondent has fully proved on record that the engagement of the petitioner was purely on the basis of need of work and after the completion of specific work, the services of the petitioner stood automatically dispensed with. However, it is well settled in **(2006) 6 SCC 221, case titled as Reserve Bank of India V. Gopinath Sharma & Anr. In which it was held that :—**

**“Workman not appointed to any regular post but engaged on the basis of need of work on day to day basis, held, had no right to the post.”**

14. Similarly in **2006 (2) SCC 794 in case titled as Haryana State Agricultural Marketing Board V. Subhash Chand & Anr.** In which it was held that:—

**“If nature of service does not come within purview of definition of retrenchment in section 2(oo), question of applicability of section 25-G does not arise. Bare perusal of offer of appointment (set out in para 2 herein) clearly shows that respondent was appointed on seasonal contracts. Hence, respondent not having been reengaged on expiry thereof, he was not retrenched within meaning of section 2(oo), and his case fell exception in section 2(oo)(bb). Hence, section 25-G was inapplicable in his case and dispensing with engagement of respondent cannot be said to be unwarranted in law.”**

15. Apart from it was further held incase titled as **Punjab State Electricity Board V. Darbara Singh reported in 2006 LLR 68 SC.** and incase titled as **Municipal Council Samrala V. Surhwinder Kaur reported in 2006 LLR 1009 SC.** In which it was held that:—

**“ material on record established that engagement of workman was for specific period and as such his termination will be excluded as per the provisions of section 2(oo)(bb) of the I.D Act and hence, no retrenchment compensation will be payable on his termination even when he has worked for more than 240 days in the preceding 12 calendar months.”**

16. Now, turning to the other aspect of the case, the petitioner tried to establish on record that his juniors are still continuing with the respondent department but he did not prove on record that on which date they joined the department and in fact they are juniors to the petitioner. On the other hand, the respondent has proved on record that the petitioner was engaged as casual labourer and the petitioner was called when the work was available with the respondent and further the petitioner was engaged for specific work and for specific time as per the need of the work and as such it does not lie in the mouth of petitioner to claim any right over the post which was offered to him for specific period and for specific work and therefore, the case of petitioner cannot be accepted for his reinstatement keeping in view the entire facts and circumstances of the case.

17. Thus, on the strength of the above cited rulings and having regard to the evidence on record, it can safely be concluded that the services of the petitioner has not been illegally terminated by the respondent without any notice or compensation which is legal and justified and rather the petitioner was engaged as casual labourer for seasonal work and for specific period. Accordingly, this issue is decided against the petitioner and in favour of the respondents.

*Issue No. 2:*

18. Since, I have held under issue No-1 above, that the services of the petitioner has been legally dispensed with by the respondent without notice or compensation, hence the petitioner is not entitled to any service benefits. Accordingly, the issue no.2 is answered in negative.

*Issue No. 3:*

19. In support to this issue, no evidence was led by the respondent nor it was pressed during the course of arguments. However I find nothing wrong with this petition which is perfectly maintainable in the present form. Accordingly, issue No. 3 is decided in favour of petitioner and against the respondent.

#### RELIEF

As a sequel to above discussion and findings on issue No.1 to 3, the claim fails and is hereby dismissed and the reference is ordered to be answered accordingly. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records. Announced in the open court today on this 24<sup>th</sup> day of March, 2009 in the presence of parties.

J. S. MAHANTAN,  
Presiding Judge,  
Industrial Tribunal-cum-Labour court, Shimla.

**In the Court of Jagmohan Singh Mahantan, Presiding Judge, Industrial Tribunal-cum-Labour Court, Shimla**

Ref. No. 229 of 2003

Instituted on 4-9-2003

Decided on 2-3-2009

Hem Chand S/o Shri Chet Ram R/o V&PO Hanuman Barog, Tehsil Arki, District Solan, H.P.

*Versus*

Managing Director, HRTC, Shimla 171003, H.P.

*.. Respondent.*

*Reference under section 10 of the Industrial Disputes Act, 1947.*

For petitioner : Shri M.L Sharma, Ld. Csl.  
For respondent : Shri Rajesh Verma, Ld. Csl.

#### AWARD

1. The following reference has been received from appropriate government by this court for adjudication:

2. The petitioner has filed a separate claim asserting therein that he was engaged as peon on part time basis for 89 days at a fixed remuneration of Rs. 1000/- per month by the respondent *vide* office order dated 15-10-1998 and though the petitioner was termed as part time for six hours but he performed his duties from 10.00 am to 5.00 pm for eight hours and that the petitioner was engaged by the respondent from time to time and *vide* letter dated 8-9-2000, the services of the petitioner were reengaged at a fixed salary of Rs.2000/-per month till further orders and that the respondent *vide* memo dated 27-3-2000, dispensed with the services of persons engaged on contract/part time basis at a fixed remuneration, who have not completed 240 days in current session and that during the entire service, the petitioner worked in the office of the respondent as peon though his salary was being withdrawn from HRTC Shimla and that the respondent terminated the services of the petitioner *w.e.f.* 31-3-2000, which was served upon the petitioner on 3-5-2001 and the petitioner has completed more than 240 days without any break and as such he is entitled for regularization and that against the termination, the petitioner filed an O.A before the Administrative Tribunal, which was dismissed on the ground of jurisdiction and that the impugned order dated 27-4-2001 is wrong, illegal and against the provision of Industrial Disputes Act, 1947 and that the petitioner was engaged as peon on contract basis and as such the retrenchment of the petitioner is contrary to the law laid down by their lordships and that the retrenchment of the petitioner is violative of articles 14 and 16 of the Constitution of India and as such prayed for reinstatement in service with all consequential benefits, hence this claim.

3. The respondent resisted and contested the claim of petitioner, which filed reply *inter alia* raising preliminary objections of maintainability and that the petitioner was employed on contract basis. On merits, it is contended that the petitioner was engaged on contract basis for a period of 89 days *w.e.f.* 15-10-98 at a fixed salary of Rs.1000/- per month on part time basis for 6 hours a day, whose contract was renewed time and again as per requirement. It is denied that the petitioner had completed 240 days in each calendar year and in the preceding 12 months before his retrenchment and the petitioner was retrenched on the basis of contract executed by him, which is legal and valid as the appointment of petitioner was for a specific period, hence the petitioner is not entitled for the benefits as envisaged under section 25 F of the Industrial Disputes Act, 1947 and that the respondent has not violated the provisions of Articles 14 and 16 of the Constitution of India as the petitioner was purely engaged on contract basis and his termination is also on the terms and conditions of the contract executed between the parties, hence prayed for the dismissal of the claim petition.

4. In the rejoinder, the petitioner controverted the assertions made in the reply and reaffirmed and reiterated the averments of the petition.

5. The following issues were framed by this Court on 21.12.2005:

1. Whether the services of the petitioner has been illegally terminated by the respondent? If so, its effect? ..OPP.
2. If issue no.1 is proved in affirmative, to what relief of service benefits the petitioner is entitled to? ..OPP.
3. Whether the present petition is not maintainable? ..OPR.
4. Relief.

6. I have heard the learned counsels for the parties and have gone through the record of the case.

7. For the reasons to be recorded hereinafter while discussing issues for determination my findings on the aforesaid issues area as under.

Issue No.1 Yes.

Issue No.2 Entitled for reinstatement in service alongwith seniority and continuity but without back wages.

Issue No.3

No.

Relief.

Reference answered in affirmative per operative part of award.

## REASONS FOR FINDINGS

*Issue No. 1:*

8. Coming to issue no.1, the petitioner has examined two PWs in all. Petitioner Shri Hem Chand appeared into witness box as PW-1, who has stated on oath that he was engaged as peon by respondent on 15.10.98, who was working under the Managing Director, who was removed from service on 3.5.2001, whose attendance was marked in the office and worked continuously till his removal and even no notice nor compensation has been paid to him by the respondent as such prayed for reinstatement with back wages.

9. PW-2 Shri Dalvir Singh, who has stated that he is posted as clerk at HRTC workshop Tara Devi and has brought the attendance register of the petitioner. The petitioner was engaged on 15-10-98 for 89 days and his attendance in marked in register till 30-11-2000.

10. To rebut the case of the petitioner, the respondent examined Shri Nand Lal Sharma, Senior Assistant, HRTC unit Tara Devi Shimla, who has stated that petitioner was engaged as part time peon for 89 days on fixed remuneration of Rs.1000/-per month on 15-10-98 for 6 hours a day and proved the appointment letter of the petitioner Ex.R-1 and the petitioner was engaged for specific period of 89 days as and when his services were required, the appointment letters of the petitioner are Ex.R-2 to R-5 and the petitioner till 31-4-2001 and the corrigendum was issued on 12-6-2001 for the change of date which is Ex. RA.

11. The case of the petitioner is that he being a peon having worked for more than 240 days, whose termination without notice and compensation is illegal and as such he is entitled for the protection of section 25-F of the Industrial disputes Act, 1947.

12. On the contrary, the respondent contends that the petitioner is not entitled to any benefits under the Industrial Disputes Act, 1947 as he was engaged on contract basis for 89 days only and the contract was repeated from time to time for 89 days and even the petitioner has not completed 240 working days in any calendar year before his termination.

13. I have considered the respective contention of both the parties and have scrutinized the record of the case.

14. After the close scrutiny of the record of the case, there is no dispute about the appointment of the petitioner as peon, who was appointed as peon on contract basis by the respondent on 15.10.98 and worked till 9/2001 with fictional breaks. The petitioner was appointed as peon on contract basis for 89 days which was renewed from time to time as is evident from Ex. R-1 to R-5 placed on record who worked for 267 days *w.e.f.* 10/1998 to 10/1999 as is evident from the Ex.R-1 to R-5 placed on record and in view of the statement of PW-2 Dalvir Singh, Clerk of HRTC and RW-1 Nand Lal Sharma, Senior Assistant HRTC who are not inconsistent on the point of the last work done by the petitioner as PW-2 Dalvir Chand has stated that as per attendance register, the attendance of the petitioner has been marked upto 30th November, 2001 whereas RW-1 Nand Lal Sharma has stated that the petitioner had worked till 30-4-2001 and the corrigendum was issued on 12-6-2001 for the change of date which goes to show that the HRTC has not maintained the correct record of the working days put in by the petitioner. Moreover, the petitioner has completed more than 240 working days and his termination without notice or retrenchment compensation is illegal. Here I am fortified with a view taken by their lordships of **Hon'ble Supreme Court as reported in Haryana State Electronics Development Corporation Limited Vs Mamnl, (2006) 9 SCC 434.** that appointment for a short period (89 days) and termination of services at the end of the said period and reappointment after a gap of one day, such action of termination and reappointment repeated again and again for a period of about one year and a half year, in such circumstances, the Hon'ble Supreme Court has held the termination not bonafide but adopted to defeat the object of the Act. Thus it is not covered by section 2(oo) (bb) of the Industrial Disputes Act, 1947. Their lordships of the Hon'ble Supreme Court has held as under:—

*“Section 2(oo) (bb) of the Industrial Disputes Act reads as under:*

**“2. (oo) (bb) termination of the services of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry of such contract being terminated under a stipulation in that behalf contained therein.”**

**“...It is not possible for us to accept the aforesaid plea raised at the hands of the management on account of the fact that the factual position, which has not been disputed, reveals that the respondent workman was repeatedly working on 89 days basis. It is, therefore, clear that the intention of the**



**management was not to engage the respondent workman for a specified period, as alleged, but was to defeat the rights available to her under section 25-F of the Act. The aforesaid practice at the hands of the petitioner management to employ the workman repeatedly after notional break clearly falls within the ambit and scope of unfair labour practice.”**

Similarly our own Hon'ble High Court in case **shri Manoj Kumar sharma Vs. HRTC & Another in CWP No. 39 of 06 dated 28-5-2007** has held that the intention of the management was not to engage the respondent workman for a specified period was to defeat the rights of a workman under section 25-F of the Act as in that case also the petitioner was initially appointed for 89 days and after giving him fictional breaks, reappointed for another 89 days followed by one year appointment. The practice has been adopted by the management of HRTC to defeat the provisions of section 25-F of the Industrial Disputes Act, 1947 which amounts to unfair labour practice. In the instant case also the petitioner was initially appointed for 89 days and after giving him fictional break, reappointment for another 89 days followed by others appointments for 89 days as is evident from Ex. R-1 to R-5. It is fully proved on record that even after giving fictional breaks, the petitioner has completed 445 days. This practice of fictional breaks has been adopted by the respondent to defeat the provisions of section 25-F of the Industrial Disputes Act, 1947. Thus, having regard to the entire evidence on record and in view of the fact that the petitioner had completed 445 working days before his termination was affected and his termination without notice and compensation under section 25-F of Industrial Disputes Act, 1947 is illegal. Accordingly issue no.1 is decided in favour of the petitioner and against the respondent.

*Issue No. 2:*

15. Since I have held under Issue No.1 above, that the services of the petitioner has been illegally terminated by the respondent without notice or payment of compensation, hence the petitioner is held entitled to reinstatement in service with seniority and continuity from the date of illegal retrenchment. However, the petitioner is not entitled to back wages as he has not placed any material on record to substantiate that he was not gainfully employed after his retrenchment. Accordingly, Issue No.2 is decided in favour of petitioner and against the respondent.

*Issue No.3:*

16. In order to prove this issue, no evidence was led by the respondent nor it was pressed during the course of arguments. However I find nothing wrong with this claim of the petitioner which is perfectly maintainable in the present form. Accordingly, Issue No.3 is decided in favour of petitioner and against the respondent.

#### RELIEF

As a sequel to my above discussion and findings on issue no.1 to 3, the claim of the petitioner succeeds and is hereby allowed and as such the reference is answered in affirmative and the petitioner is ordered to be reinstated in service forthwith with seniority and continuity in service. However, the petitioner is not entitled to back wages as he has not placed any material on record to substantiate that he was not gainfully employed after his termination. Let a copy of this award be sent to the appropriate government of publication in official gazette. File, after completion, be consigned to records.

Announced in the open court today on this Day of 2nd March 2009 in the presence of parties.

(J.S. MAHANTAN)  
Presiding Judge,  
Industrial Tribunal-cum-Labour Court,  
Shimla.

**In the Court of Jagmohan Singh Mahantan, Presiding Judge, Industrial Tribunal-cum-Labour Court, Shimla**

Ref. No. 17 of 2002

Instituted On 17-1-2002

Decided On 24-3-2009

Puran Dutt S/o Shri Bala Ram R/o Village & P.O Satlai, Sub Tehsil Junga, District Shimla, H.P.

*Versus*

*Reference under section 10 of the Industrial Disputes Act, 1947.*

For petitioner : Shri P.P Chauhan, Ld. Csl.  
For respondent : Shri Jagat Singh Shyam, Ld. Csl.

#### AWARD

1. The following reference has been received from appropriate government by this court for adjudication:

**“Whether the termination of the services of Shri Puran Dutt s/o Shri Bala Ram *w.e.f.* 5-2-1997 by the Managing Director, HP Civil Supplies Corporation Ltd. Shimla without serving notice and without complying section 25-F of the Industrial Disputes Act, 1947 is proper and justified? If not, what salary, seniority, service benefits and amount of compensation, the above workman is entitled to?”**

2. The petitioner has filed a separate claim asserting therein that he was initially appointed as helper with the respondent department *w.e.f.* 23-12-1995 for one month in the headquarter and then the petitioner continued with further extension and had completed 240 days in each calendar year and that the petitioner was discharging his duties with the best of his abilities and to the entire satisfaction of his superiors and that on 5-2-1997, the services of the petitioner were terminated by an oral order without assigning any reason which was arbitrary, malafide and issued in colorable exercise of powers and in utter disregard and violation of rules, regulations, standing orders as well as articles 14 and 16 of the Constitution of India and that the action of the respondent whereby they have restored to contract appointment instead of initially appointing the petitioner on *ad hoc* basis and then on the regular basis against the regular post and that the method of offering appointment to the petitioner and the similarly situated persons on contract basis by commanding to sign on the dotted line by itself is indicative of the intention of the respondent department to deprive the petitioner of benefits which may become due and admissible to the petitioner by efflux of time and that the impugned order has been issued without assigning any reason and was non-speaking order which is null and void and is not sustainable in the eyes of law as the contract itself has not been rescinded specifically and that the respondent did not act fairly and gave a fair deal to petitioner consistent with Article 14 of Constitution of India and that the termination order is against the mandatory statutory provisions of section 25-F, 25-G and 35-H of the Act and that the respondent is estopped on account of its own act, deed, omission and conduct from issuing the impugned order and the respondent is bound to retain the petitioner till his services are regularized in accordance with law as the vacancy against which the petitioner was working is of permanent nature and still existing and that the terms and conditions laid down in the contract/appointment letter by the respondent are unfair, arbitrary and one sided to which the petitioner had no option but to sign on the dotted line in the obedience to the command of his employer who was in dominant position after the petitioner has joined the services under the respondent department and that the respondent department is running in profits over lakhs of rupees which is growing immensely with the passage of time and more staff is required and that the petitioner is unemployed youth and even juniors have been engaged and retained by the respondent department who are still working with the department and as such prayed for reinstatement in service with continuity, seniority alongwith full back wages, hence this claim duly supported by an affidavit.

3. The respondent resisted and contested the claim of petitioner, which filed reply inter alia raising preliminary objection that the petitioner is not a workman. On merits, it is admitted that the petitioner had completed 240 days in a calendar year and that Shri Puran Dutt was appointed on daily wages *w.e.f.* 12-12-1995 *vide* order dated 5-2-1997 after the ex post facto sanction in the case, on co-terminus basis with the appointment of the Chairman and the provisions of section 25-F are not applicable as the appointment on daily wages was specifically for the limited period i.e upto the tenure of the then Chairman of corporation and after the resignation of the then Chairman on 24-1-1998, the services of petitioner automatically ceased as per the office order dated 5-2-1997. It is contended that initially Shri Puran Dutt was specially appointed for a specific period with the tenure of the then Chairman and the action of the respondent not to continue the services of the petitioner beyond the expiry of tenure of the then Chairman is in accordance with law. It is denied that the regular appointment of the petitioner was made whatsoever and as such the petitioner was not entitled to any notice in view of order dated 5-2-1997 and that there is no violation of any provisions of the Industrial Disputes Act, 1947 and as such prayed for the dismissal of claim petition as prayed for.

4. In the rejoinder, the petitioner controverted the assertions made in reply and

5. The following issues were framed by this Court on 27.10.2005.

1. Whether the services of the petitioner were illegally terminated *w.e.f.* 5-2-1997 without complying the provisions of section 25-F of the ID Act, 1947? If so, its effect? ..OPP.

2. If issue no.1 is proved in affirmative, whether the petitioner is entitled for relief claimed? ..OPP.
3. Whether the petition is not maintainable in the present form? ..OPR.
4. Relief.
6. I have heard the learned counsels for the parties and have gone through the record of the case.
7. For the reasons to be recorded hereinafter while discussing issues for determination my findings on the aforesaid issues area as under.

Issue No.1	Yes.
Issue No.2	Entitled for reinstatement in service alongwith seniority and continuity but without back wages.
Issue No.3	No.
Relief.	Reference answered in affirmative per operative part of award.

#### REASONS FOR FINDINGS

##### *Issue No.1:*

8. Coming to Issue No.1, the petitioner has examined himself as PW-1, who tendered affidavit Ex. PA in his evidence. In cross-examination, the petitioner has admitted that he was engaged as daily wages worker at the time of his appointment and Shri Singhi Ram was the Chairman of the respondent corporation. The petitioner has denied that his appointment was till the term of the Chairman and admitted the office order dated 5-2-1997 Ex. PX. It is denied that his appointment was co-terminus with the post of Chairman.

9. To rebut the case of the petitioner, the respondent examined Shri Attar Singh Assistant Divisional Manger, who has stated that he is serving with the respondent since 1981 and the petitioner was engaged as daily wages peon with the Chairman on 12-12-1995 on coterminus basis and proved the appointment letter Ex. PX and as such the petitioner is having no legal right to claim his reengagement with the department. In cross examination, the witness has stated that the petitioner was engaged in 1995 but the office order was issued in 1997. He does not know whether any office order was issued in 1995 when the petitioner was engaged and the staff is only provided when the Chairman is not a Minister.

10. The case of the petitioner is that he being a daily wages worker having worked for more than 240 days and his termination without notice and compensation is illegal and as such he is entitled for the protection of section 25-F of the Industrial Disputes Act, 1947.

11. On the contrary, the respondent contends that the petitioner is not entitled to any benefits under the Industrial Disputes Act, 1947 as he was engaged on co-terminus basis only with the Chairman and after the resignation of the Chairman, the services of the petitioner stood automatically dispensed with, hence the petitioner is not entitled to any relief under the Industrial disputes Act, 1947.

12. I have considered the respective contention of both the parties and have scrutinized the record of the case.

13. After the close scrutiny of the record of the case, no doubt that the respondent has tried to establish on record that the petitioner was engaged as daily wages peon on co-terminus basis whose service goes with the Chairman of the respondent corporation and after the resignation of the Chairman, the services of the petitioner automatically came to an end as per office order dated 5-2-1997 Ex. PX placed on record. It is also proved on record that the petitioner was engaged as daily wages peon in the year 1995 whereas the office order Ex. PX was issued in the year 5.2.1997. It is significant to note that the respondent has failed to prove on record as to why the condition of co-terminus with the Chairman of the respondent corporation was not incorporated in the initial appointment of the petitioner in the year 1995 and the appointment letter was issued to the petitioner in the year 1997 which shows the malafide of the respondent corporation which further amounts to unfair labour practice especially when the petitioner has proved on record that he has been working as peon on daily wages since 1995 without any break and interruption and had completed 240 working days in every calendar year preceding his termination. It is also borne out from the record that the services of the petitioner was terminated without complying with the mandatory provision of law as

envisaged under section 25-F of the ID Act, 1947 as no mandatory notice of one month nor compensation was paid to the petitioner at the time of his termination. Apart from it, even if the stand of the respondent is taken into consideration it does not matter even if the appointment letter dated 5-2-1997 was issued by the respondent showing the services of petitioner on co-terminus basis and as such no such conditions of co terminus with the Chairman of respondent corporation cannot be imposed subsequently especially when the petitioner had already worked for more than about two years without any condition on the part of respondent corporation and as such the petitioner cannot be terminated from service unless and until one month notice and compensation in lieu thereof is to be given to the petitioner especially when he has completed 240 working days in every calendar year preceding his termination.

14. Now turning to the other aspect of the case, it is admitted by the respondent department that the petitioner has completed 240 working days in a calendar year as admitted by the respondent in its reply under para 1 & 2 and even no notice nor compensation was paid to the petitioner by the respondent at the time of his termination which is entirely illegal and against the provision of section 25-F of the Industrial Disputes Act, 1947. Accordingly, issue no.1 is decided in favour of the petitioner and against the respondent.

*Issue No.2:*

15. Since I have held under issue no.1 above, that the services of the petitioner has been illegally terminated by the respondent without notice or payment of compensation, hence the petitioner is held entitled to reinstatement in service with seniority and continuity from the date of illegal retrenchment. However, the petitioner is not entitled to back wages as he has not placed any material on record to substantiate that he was not gainfully employed after his retrenchment. Accordingly, issue no.2 is decided in favour of petitioner and against the respondent.

*Issue No.3:*

16. In order to prove this issue, no evidence was led by the respondent nor it was pressed during the course of arguments. However, I find nothing wrong with this petition which is perfectly maintainable in the present form. Accordingly, Issue No. 3 is decided in favour of petitioner and against the respondent.

**RELIEF**

As a sequel to my above discussion and findings on issue no.1 to 3, the claim of the petitioner succeeds and is hereby allowed and as such the reference is answered in affirmative and the petitioner is ordered to be reinstated in service forthwith with seniority and continuity in service. However, the petitioner is not entitled to back wages as he has not placed any material on record to substantiate that he was not gainfully employed after his retrenchment. Let a copy of this award be sent to the appropriate government of publication in official gazette. File, after completion, be consigned to records.

Announced in the open court today on this 24th Day of March 2009 in the presence of parties counsels.

(J.S MAHANTAN),  
Presiding Judge,  
Industrial Tribunal-cum-Labour Court,  
Shimla.

**In the Court of Jagmohan Singh Mahantan, Presiding Judge, Industrial Tribunal-cum-Labour Court, Shimla**

Ref. No. 54 of 2003

Instituted on 6-2-2003

Decided on 5-3-2009

Ranjeet Singh S/o Shri Khushi Ram R/o Village Rohtan Wala, P.O Lodhi Majra, District Solan, H.P.

*Versus*

The Executive Engineer, HPSEB, Division Parwanoo, District Solan, H.P.

*. . Respondent.*

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner : Shri Rakesh Manta, Ld. Csl.  
For respondent : Ms. Shilpa Sood, Ld. Csl.

# AWARD

1. The following reference has been received from appropriate government by this court for adjudication:

**“Whether the termination of the services of Shri Ranjeet Singh S/o Shri Khushi Ram daily wages beldar by the Executive Engineer, HPSEB Division Parwanoo, District Solan HP w.e.f. July 1998 without complying with the provisions of Industrial Disputes Act, 1947 is proper and justified? If not, what relief the aggrieved workman is entitled to?”**

2. The petitioner has filed a claim asserting therein that he was engaged as beldar in March, 1986, who worked till 26-6-1996 with the respondent and after a few days he was again taken back on duty and worked till 31st July, 1998 and then the services of the petitioner has been orally terminated by the respondent and that the petitioner being employed by the respondent is a workman under section 2 (s) of the Industrial Disputes Act, 1947 and that the petitioner had completed 240 working days in each calendar year till his termination and that the termination of the petitioner is null, void and inoperative due to failure of the employer to follow the provisions of section 25-F, 25-N of the Act *vide* which three months notice or pay in lieu of that alongwith retrenchment compensation was to be paid, hence this claim.

3. The respondent resisted and contested the claim of petitioner, which filed reply interalia raising preliminary objections that there is no enforceable cause of action in favour of the petitioner and against the respondent and that no legal or vested rights of the petitioner have been infringed or violated by the respondent and that the claim is hit by the vice of delay and latches. On merits, it is contended that the petitioner himself abstained the job wilfully without intimation to his superiors under whom the petitioner was worked at that time and the petitioner had not approached the respondent for his reengagement and as such the respondent never violated the standing orders instructions as the petitioner never approached for his reengagement after 20-2-1999, who was engaged as beldar on daily wages *w.e.f.* 26-3-1986 and worked as such till 20-2-1999 and then he left the job of his own. It is admitted that the petitioner has completed 240 days during 1995 and since the petitioner abandoned the job of his own, who himself did not turn up for duty after 20-2-1999, hence no notice was required to be served upon the petitioner as per the provisions of the Industrial Disputes Act, 1947, whose services have not been terminated by the respondent, hence the principle of last come first go and to pay retrenchment compensation does not arise at all and the petitioner himself is responsible for losing the job as he never approached the respondent for his reengagement after 20-2-99 and as such prayed for the dismissal of the claim petition.

4. In the rejoinder, the petitioner controverted the assertions made in the reply and reaffirmed and reiterated the averments of the petition.

5. The following issues were framed by this Court on 01-05-2006.

1. Whether the services of the petitioner has been illegally terminated by the respondent without complying the provisions of Industrial Disputes Act, 1947? If so, its effect? ..OPP.
2. If issue no.1 is proved in affirmative, to what relief of service benefits the petitioner is entitled to? ..OPP.
3. Whether the petition is barred by limitation? ..OPR.
4. Whether the petition in the present form is not maintainable? ..OPR.
5. Relief.

6. I have heard the learned counsels for the parties and have gone through the record of the case.

7. For the reasons to be recorded hereinafter while discussing issues for determination my findings on the aforesaid issues area as under.

Issue No.1 Yes.

Issue No.2 Entitled for reinstatement in service alongwith seniority and continuity but without back wages.

Issue No.3	No.
Issue No.4	No.
Relief.	Reference answered in affirmative per operative part of award.

#### REASONS FOR FINDINGS

##### *Issue No.1:*

8. Coming to issue no.1, the petitioner has examined himself as PW-1, who has stated that he was engaged as beldar by the respondent in the year 1986 and worked till 1998, who was orally removed from service by the respondent on 31-7-1999 and then he approached the respondent for his reengagement. He had worked for 240 days in a calendar year, who did not abandon the work but he was removed by the Junior Engineer. He had not received any notice before his removal nor any enquiry was held against him and even no compensation was given to him, whose attendance was marked in the muster roll and as such prayed for the reinstatement in service with back wages.

9. To rebut the case of the petitioner, the respondent examined Er. Amrik Singh Dhillon, who has stated that the petitioner was working in the department since 1986 to 1999 with breaks and proved the mandays chart Ex. RA. The petitioner left the job on 20-2-1999, who was not removed by the department and was habitual absentee, who never approached the department for his reengagement.

10. The case of the petitioner is that he being a daily wages beldar having worked for more than 240 days, whose termination without notice and compensation is illegal and as such he is entitled for the protection of section 25-F of the Industrial disputes Act, 1947.

11. On the contrary, the respondent contends that the petitioner is not entitled to any benefits under the Industrial Disputes Act, 1947 as he was not removed by the department but left the job without informing his officers, who did not approach the department for his reengagement after 20-2-1999, hence there is no necessity to serve a notice under section 25-F of the Industrial Disputes Act, 1947 as he abandoned the job of his own.

12. I have considered the respective contention of both the parties and have scrutinized the record of the case.

13. After the close scrutiny of the record of the case, it stands proved from mandays chart Ex. RA placed on record that the petitioner has completed 240 working days in a calendar year 1995 which is also admitted by the respondent in their reply that the petitioner has completed 240 days in the year 1995. It is well settled in case titled as **State of HP & Ors V/s Bhatag Ram & Anr. as reported in latest HLJ 2007 (HP) 903.** in which it was held that :—

**“Continuing of 240 days not necessary in 12 calendar months. It is not necessary to workman to complete 240 days during 12 months for taking the benefits of section 25-G & 25-H of the Act.”**

14. The perusal of this ruling makes it clear that it is not necessary that the workman must complete 240 working days in a preceding calendar year of his termination. However, if he completes 240 working days in any calendar year preceding his termination that period will be counted for reckoning of requisite period of working days to cover his case under section 25 F of the Industrial Disputes Act, 1947. In the instant case, the petitioner has proved on record that he worked for more than 240 days in a calendar year as is evident from Ex. RA and moreover, no notice nor any compensation was paid to the petitioner at the time of his termination and obviously therefore, I am of the firm opinion that no notice nor any retrenchment compensation was paid to the petitioner by the respondent at the time of his termination and as such the termination of petitioner by the respondent *w.e.f.* July, 1999 is illegal and unjustified without complying with the provisions of ID Act, 1947. Accordingly, Issue No.1 is decided in favour of petitioner and against the respondent.

##### *Issue No.2:*

15. Since I have held under issue no.1 above, that the services of the petitioner has been illegally terminated by the respondent without notice or payment of compensation, hence the petitioner is held entitled to reinstatement in service with seniority and continuity from the date of illegal retrenchment. However, the petitioner is not entitled to back wages as he has not placed any material on record to substantiate that he was not gainfully employed after his retrenchment. Accordingly, issue no.2 is decided in favour of petitioner and against the respondent.

*Issue No. 3:*

16. In support of this issue, no evidence was led by the respondent being the legal issue. However, I have scrutinized the record of the case and observed that there is no limitation under the I.D Act as it was held by their lordship of **Hon'ble Supreme Court as reported in (1999) 6 SCC 82 case titled as Ajayab singh Vs. Sirhind Co-operative Marketing –cum- processing Service Society Limited and Another. In which it was held that:—**

**“the provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”**

And as such on the strength of this ruling, it can safely be concluded that this petition is not barred by limitation. Accordingly, issue No-3 is decided against the respondent and in favour of the petitioner.

*Issue No.4:*

17. In order to prove this issue, no evidence was led by the respondent nor it was pressed during the course of arguments. However I find nothing wrong with this claim of the petitioner which is perfectly maintainable in the present form. Accordingly, issue no.4 is decided in favour of petitioner and against the respondent.

#### RELIEF

As a sequel to my above discussion and findings on issue no.1 to 4, the claim of the petitioner succeeds and is hereby allowed and as such the reference is answered in affirmative and the petitioner is ordered to be reinstated in service forthwith with seniority and continuity in service. However, the petitioner is not entitled to back wages as he has not placed any material on record to substantiate that he was not gainfully employed after his termination. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open court today on this Day of 5th March 2009 in the presence of parties.

(J.S MAHANTAN),  
Presiding Judge,  
Industrial Tribunal-cum-Labour Court,  
Shimla.

**In the Court of Jagmohan Singh Mahantan, Presiding Judge, Industrial Tribunal-cum-Labour Court, Shimla, Camp at Nahan**

Ref. No. 140 of 2004

Instituted On 6-12-2004

Decided On 26-3-2009

Bir Singh S/o Shri Jalam Singh R/o Village & P.O Jhakando, Tehsil Shillai, District Sirmour, H.P.

*..Petitioner.*

*Versus*

The Divisional Forest Officer, Renuka Forest Division at Renukaji, District Sirmour, H.P.

*..Respondent.*

*Reference under section 10 of the Industrial Disputes Act, 1947.*

For petitioner

Shri A.K Gupta, Ld. Csl.

For respondent

Shri Jagdish Kanwar, Ld. DDA.

## AWARD

1. The following reference has been received from appropriate government by this court for adjudication:
2. The petitioner has filed a claim asserting therein that he was engaged as daily wages beldar by the respondent in the year 1986 where he worked upto September, 2000 when his services were dispensed with by the respondent without any notice and without observing the principle of last come first go and then the petitioner approached the Administrative Tribunal and the petition was dismissed on the ground of jurisdiction and that from the date of initial engagement, the petitioner has completed 240 days of service in several calendar years and when his services were disengaged, he was entitled to the notice and compensation under section 25-F of the Industrial disputes Act, 1947 and even junior to the petitioner are still working with the respondent which is totally illegal and that the action of the respondent is highly unjustified and in violation of the mandatory provisions of the Industrial Disputes Act, 1947 which amounts to unfair labour practice and as such prayed for reinstatement in service with continuity, seniority alongwith full back wages, hence this claim.
3. The respondent resisted and contested the claim of petitioner, which filed reply interalia contending that the petitioner was engaged during 1986 for seasonal forestry work and worked upto July, 2004, who worked for 89 days in 1986, 269 days in 1987, 207 days in 1988, 179 days in 1989, 184 days in 1998, 265 days in 1999, 197 days in 2000, 170 days in 2001 and 36 days in 2004 and the mandays chart of the petitioner is Annexure R-1 and the forestry works by virtue of its nature are seasonal and are not spread over for the entire year and due to drastic cut in the budget by the government, some of daily wagers have been disengaged from work after July, 2000 and the provisions of Industrial Disputes Act are not applicable in this case and even the petitioner was not regular in his job and that no junior labourer to the petitioner were engaged to disengage the petitioner and the daily wager who are presently with the department are senior to the petitioner. It is contended that the petitioner would be reengaged on availability of work and as per principle of first come last go and as such prayed for the dismissal of claim petition.
4. No rejoinder filed. The following issues were framed by this Court on 19-1-2006.
  1. Whether the service of the petitioner has been illegally terminated by the respondent? If so, its effect? ..OPP.
  2. If issue no.1 is proved in affirmative, to what relief of service benefits, the petitioner is entitled to? ..OPP.
  3. Whether the petitioner has abandoned the job of his own? If so, its effect? ..OPR.
  4. Whether the petition in the present form is not maintainable? ..OPR.
  5. Relief.
5. I have heard the learned counsels for the parties and have gone through the record of the case.
6. For the reasons to be recorded hereinafter while discussing issues for determination my findings on the aforesaid issues are as under.

Issue No. 1	Yes.
Issue No. 2	Entitled for reinstatement in service alongwith seniority and continuity but without back wages.
Issue No. 3	No.
Issue No. 4	No.
Relief.	Reference answered in affirmative per operative part of award.

## REASONS FOR FINDINGS

*Issue No.1:*

7. Coming to issue no.1, the Ld. Csl. for the petitioner has submitted at the bar that since the respondent has admitted in its reply that the petitioner has completed 240 working days in a calendar year preceding his



termination and as such his case is admitted by the respondent and as such the petitioner does not want to lead his evidence as per order dated 28-8-2008.

8. To rebut the case of the petitioner, the respondent examined Shri Jalam Singh, Incharge R.O Shillai, who has stated that the petitioner was engaged as daily wages beldar in Jan. 1986 who continued as such till 2004 with fictional breaks, who was never regular in his duties and proved the mandays chart of the petitioner Ex. RA. The petitioner was engaged for seasonal work and for specific period, who left the job in 2004 of his own, who was never terminated by the respondent. The petitioner has completed 269 working days in the year 1987 and 265 days in 1999. No junior to the petitioner was engaged by the respondent and the casual labour was engaged for seasonal work for 89 days and no new casual labour could be engaged after 1-1-1996 as per government policy and the respondent has adopted the principle of first come last go.

9. The case of the petitioner is that he being a daily wages beldar having worked for more than 240 days in many calendar years and his termination without notice and compensation is illegal and as such he is entitled for the protection of section 25-F of the Industrial Disputes Act, 1947.

10. On the contrary, the respondent contends that the petitioner is not entitled to any benefits under the Industrial Disputes Act, 1947 as he has not completed 240 working days in a calendar year preceding his abandonment and even the petitioner was engaged as casual labour on seasonal work and for specific period. Moreover, the petitioner was not removed from service, who left the job of his own will and no junior to the petitioner was retained by the respondent department, hence the petitioner is not entitled to any relief under the Industrial disputes Act, 1947.

11. I have considered the respective contention of both the parties and have scrutinized the record of the case.

12. After the close scrutiny of the record of the case, it remains a fact that the petitioner has completed more than 240 days of service in 1986, 269 days in 1987, 207 days in 1988, 179 days in 1989, 184 days in 1998, 265 days in 1999, 197 days in 2000, 170 days in 2001 and 36 days in 2004 as is evident from the mandays chart Ex. RA placed on record which fact is also admitted by RW-1 Shri Jalam Singh in his evidence that the petitioner has completed 269 days in the year 1987 and 265 days in 1999. It is well settled in case titled as **State of HP & Ors V/s Bhatag Ram & Anr. as reported in latest HLJ 2007 (HP) 903.** in which it was held that :—

**“Continuing of 240 days not necessary in 12 calendar months. It is not necessary to workman to complete 240 days during 12 months for taking the benefits of section 25-G & 25-H of the Act.”**

13. The perusal of this ruling makes it clear that it is not necessary that the workman must complete 240 working days in a preceding calendar year of his termination. However, if he completes 240 working days in any calendar year preceding his termination that period will be counted for reckoning of requisite period of working days to cover his case under section 25 F of the Industrial Disputes Act, 1947. In the instant case, the petitioner has proved on record that he had worked for more than 240 days in a calendar year as is evident from Ex. RA and moreover, no notice nor any compensation was paid to the petitioner at the time of his termination and obviously therefore, I am of the firm opinion that no notice nor any retrenchment compensation was paid to the petitioner by the respondent at the time of his termination and as such the termination of petitioner by the respondent *w.e.f.* August, 2000 is illegal and unjustified without complying with the provisions of ID Act, 1947. Accordingly, Issue No.1 is decided in favour of petitioner and against the respondent.

*Issue No.2:*

14. Since I have held under issue no.1 above, that the services of the petitioner has been illegally terminated by the respondent without notice or payment of compensation, hence the petitioner is held entitled to reinstatement in service with seniority and continuity from the date of illegal retrenchment. However, the petitioner is not entitled to back wages as he has not placed any material on record to substantiate that he was not gainfully employed after his retrenchment. Accordingly, issue no.2 is decided in favour of petitioner and against the respondent.

*Issue No.3:*

15. In support of this issue, no evidence was led by the respondent nor it was pressed during the course of arguments. However, it is well settled incase titled as **State of HP & Others Vs. Bhagat Ram & Another as reported in latest HLJ 2007 (HP) 903** in which it was held that:—

**“Plea of abandonment of job-merely raising the plea of abandonment is nothing but has to be established on the basis of facts. No facts led to substantiate the plea.”**

Thus, having regard to the entire evidence on record and in view of the fact that the petitioner had completed 240 working days in many calendar years prior to his termination, hence I have no hesitation in coming to the conclusion that the services of the petitioner have been illegally terminated by the respondent *w.e.f.* August, 2000. Accordingly Issue No.3 is decided in favour of the petitioner and against the respondent.

*Issue No. 4:*

16. In order to prove this issue, no evidence was led by the respondent nor it was pressed during the course of arguments. However I find nothing wrong with this petition which is perfectly maintainable in the present form. Accordingly, issue no.4 is decided in favour of petitioner and against the respondent.

#### RELIEF

As a sequel to my above discussion and findings on issue no.1 to 4, the claim of the petitioner succeeds and is hereby allowed and as such the reference is answered in affirmative and the petitioner is ordered to be reinstated in service forthwith with seniority and continuity in service. However, the petitioner is not entitled to back wages as he has not placed any material on record to substantiate that he was not gainfully employed after his retrenchment. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open court today on this 26th Day of March, 2009 in the presence of parties.

(J.S MAHANTAN),  
Presiding Judge,  
Industrial Tribunal-cum-Labour Court,  
Shimla, Camp at Nahan.

ब अदालत श्री रामजीत उप-रजिस्ट्रार, बड़ोह, जिला कांगड़ा (हि0 प्र0)

मुकदमा नं0 I / 2009.

तारीख दायरा 5-5-2009.

तारीख पेशी 31-08-2009.

श्रीमती राम प्यारी विधवा श्री राम स्वरूप पुत्र श्री पाती राम निवासी महाल हड़याट, मौजा ऐरला, तहसील बड़ोह, जिला कांगड़ा, हिमाचल प्रदेश . . प्रार्थी ।

बनाम

आम जनता आदि

विषय.— वसीयतनामा पंजीकृत करने बारे प्रार्थना-पत्र ।

इशतहार बनाम प्रतिवादीगण (आम जनता आदि) ।

प्रार्थी श्रीमती राम प्यारी विधवा श्री राम स्वरूप पुत्र श्री पाती राम, ने इस अदालत में प्रार्थना-पत्र गुजारा है कि उसके पति श्री राम स्वरूप ने दिनांक 31-12-2008 को उनके नाम एक वसीयतनामा किया है लेकिन वह बीमारी के कारण वह दिनांक 28-1-2009 को फौत हों जाने के कारण जो जुवानी वसीयतनामा किया था को पंजीकृत न करवा सका है। प्रार्थी ने प्रार्थना-पत्र में अनुरोध किया है कि जो अपने जीवित रहते उसके नाम जुवानी वसीयत कर रखी थी को पंजीकृत किया जाये आदि ।

अतः राजपत्र, हिमाचल प्रदेश में इशतहार प्रकाशित करके सर्व साधारण आम जनता को सूचित किया जाता है कि सायला के हित में जुवानी वसीयत को पंजीकृत किये जाने बारे कोई उजर/एतराज हो तो वह तारीख पेशी 31-08-2009 को प्रातः 10.00 बजे इस अदालत में असालतन या वकालतन हाजर आकर कर सकता है। हाजर न आने की सूरत में अदालत द्वारा एक तरफा कार्यवाही अमल में लाई जाकर मुकदमा में अन्तिम आदेश पारित कर दिये जायेंगे, बाद में कोई भी उजर/एतराज नहीं सुना जायेगा और न ही मान्य होगा ।

आज दिनांक 8-7-2009 को मोहर अदालत व मेरे हस्ताक्षर द्वारा जारी हुआ।

मोहर।

रामजीत,  
उप-रजिस्टर, बड़ोह,  
जिला कांगड़ा (हि0 प्र0)।

ब अदालत श्री मनीश चौधरी, नायब तहसीलदार एवं कार्यकारी दण्डाधिकारी, तहसील धर्मशाला,  
जिला कांगड़ा (हि0 प्र0)

मुकद्दमा नं0 103/NT/09.

श्री Pema Tsewang

बनाम

आम जनता।

विषय.— प्रार्थना पत्र जेर धारा 13 (3) हि0 प्र0 पंजीकरण अधिनियम, 1969.

नोटिस बनाम आम जनता।

श्री Pema Tsewang पुत्र श्री Tsewang Norbu, निवासी, McLeodganj, तहसील धर्मशाला, जिला कांगड़ा ने इस अदालत में शपथ पत्र सहित मुकद्दमा दायर किया है कि उसकी पुत्री नाम Tenzinchuki की जन्म तिथि 31-12-1997 है परन्तु नगर परिषद, धर्मशाला में पंजीकृत न है। अतः इसे पंजीकृत किये जाने के आदेश दिये जावें। इस नोटिस के द्वारा समस्त जनता को तथा सम्बन्धियों को सूचित किया जाता है कि यदि किसी को उपरोक्त की जन्म तिथि पंजीकृत किये जाने बारे कोई एतराज हो तो वह अपना एतराज हमारी अदालत में दिनांक 11-8-09 को असालतन या वकातलन हाजिर आकर अपना एतराज पेश कर सकता है। अन्यथा मुताबिक शपथ पत्र जन्म तिथि पंजीकृत किये जाने बारे आदेश पारित कर दिये जायेंगे।

आज दिनांक 9-7-2009 को हमारे हस्ताक्षर व मोहर अदालत द्वारा जारी किया गया।

मोहर।

मनीश चौधरी,  
नायब तहसीलदार एवं कार्यकारी दण्डाधिकारी,  
तहसील धर्मशाला, जिला कांगड़ा (हि0 प्र0)।

ब अदालत श्री गौरव चौधरी, नायब तहसीलदार एवं कार्यकारी दण्डाधिकारी, शाहपुर, जिला कांगड़ा (हि0 प्र0)

1. श्री सुनील कुमार पुत्र श्री प्रीतम, निवासी भरोट, डाकघर चड़ी तहसील शाहपुर।
2. श्रीमती सीमा देवी D/o श्री कुलदीप चन्द, निवासी गढ़, डाकघर घरोह, तहसील धर्मशाला, जिला कांगड़ा, हिमाचल प्रदेश।

बनाम

आम जनता।

प्रार्थना-पत्र श्री सुनील कुमार पुत्र श्री प्रीतम, निवासी भरोट तहसील शाहपुर व श्रीमती सीमा देवी पुत्री श्री कुलदीप चन्द, निवासी गढ़, डाकघर घरोह, तहसील धर्मशाला ने मय व्यान हल्कीया प्रार्थना-पत्र प्रस्तुत किया जिसमें उन्होंने हिन्दू-रीति-रिवाज के अनुसार शादी कर ली है लेकिन पंचायत रिकार्ड के रजिस्टर में दर्ज न है।

अतः आम जनता एवं उनके रिश्तेदारों को इस इश्तहार द्वारा सूचित किया जाता है कि उक्त शादी पंजीकरण करने बारे किसी व्यक्ति को कोई उजर/एतराज हो तो वह दिनांक 27-8-2009 को सुबह 10.00 बजे या इससे पहले असालतन या वकालतन हाजिर होकर पेश करें अन्यथा शादी पंजीकरण करने बारे अगामी कार्यवाही अमल में लाई जाएगी।

आज दिनांक ..... को मेरे हस्ताक्षर व मोहर अदालत से जारी हुआ।

मोहर।

गौरव चौधरी,  
नायब तहसीलदार एवं  
कार्यकारी दण्डाधिकारी,  
शाहपुर, जिला कांगड़ा (हि0 प्र0)।

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ब अदालत श्री हेम राज ठाकुर, तहसीलदार एवं कार्यकारी दण्डाधिकारी, शाहपुर, जिला कांगड़ा (हि0 प्र0)

श्री राज कुमार पुत्र श्री प्रकाश चन्द, निवासी वागडू, तहसील शाहपुर, जिला कांगड़ा, हिमाचल प्रदेश।

बनाम

आम जनता।

दरखास्त जेर धारा 13 (3) जन्म एवं मृत्यु पंजीकरण अधिनियम, 1969.

श्री राज कुमार पुत्र श्री प्रकाश चन्द, निवासी वागडू, तहसील शाहपुर, जिला कांगड़ा, हिमाचल प्रदेश ने इस अदालत में प्रार्थना-पत्र मय व्यान हल्फी गुजारा है कि उसके लड़के विशाल चौधरी का जन्म दिनांक 17-10-2002 को हुआ है जिसका इन्द्राज ग्राम पंचायत शाहपुर में दर्ज नहीं हुआ है।

अतः इस इश्तहार द्वारा हर आम व खास को सूचित किया जाता है कि यदि किसी को उसकी जन्म तिथि पंचायत रिकार्ड में दर्ज करने बारे कोई एतराज हो तो वह दिनांक 22-8-2009 को या इससे पूर्व अदालत में हाजिर होकर अपना एतराज पेश कर सकता है निर्धारित अवधि के पश्चात् कोई आपत्ति प्राप्त न होने की सूरत में प्रार्थना-पत्र नियमानुसार कार्यवाही की जाएगी।

आज दिनांक 4-6-2009 को मेरे हस्ताक्षर व मोहर अदालत द्वारा जारी हुआ।

मोहर।

हेम चन्द ठाकुर,  
कार्यकारी दण्डाधिकारी एवं तहसीलदार  
शाहपुर, जिला कांगड़ा (हि0 प्र0)।

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ब अदालत श्री गौरव चौधरी, नायब तहसीलदार एवं कार्यकारी दण्डाधिकारी, शाहपुर, जिला कांगड़ा (हि0 प्र0)

श्रीमती कंचन वाला पत्नी श्री वरयाम सिंह, निवासी सारनू, तहसील शाहपुर, जिला कांगड़ा, हिमाचल प्रदेश।

बनाम

आम जनता

विषय :— प्रार्थना-पत्र जेर धारा 13 (3) जन्म एवं मृत्यु रजिस्ट्रीकरण अधिनियम, 1969.

श्रीमती कंचन वाला पत्नी श्री वरयाम सिंह, निवासी सारनू, तहसील शाहपुर ने इस न्यायालय में प्रार्थना-पत्र मय व्यानी हल्फी पेश किया कि उसकी लड़की शिवानी राणा का जन्म दिनांक 12-8-2004 को हुआ है लेकिन उनकी जन्म तिथि ग्राम पंचायत के रजिस्टर में दर्ज नहीं है।

अतः इस नोटिस के माध्यम से समस्त जनता को सूचित किया जाता है कि यदि उपरोक्त लड़की का जन्म दर्ज करने में कोई आपत्ति हो तो वह दिनांक 27-8-2009 को प्रातः 10.00 बजे स्वयं अथवा असालतन या वकालतन इस अदालत में हाजिर आकर अपना इतराज पेश कर सकता है। अन्यथा एक तरफ कार्यवाही अमल में लाई जावेगी।

आज दिनांक ..... को मेरे हस्ताक्षर व मोहर अदालत से जारी हुआ।

मोहर।

गौरव चौधरी,  
नायव तहसीलदार एवं  
कार्यकारी दण्डाधिकारी,  
शाहपुर, जिला कांगड़ा (हि0 प्र0)।

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ब अदालत श्री गौरव चौधरी, नायव तहसीलदार एवं कार्यकारी दण्डाधिकारी, शाहपुर, जिला कांगड़ा (हि0 प्र0)

श्री पृथी सिंह पुत्र श्री साली राम, निवासी झरेड, डाकघर योल झरेड, तहसील शाहपुर, जिला कांगड़ा, हिमाचल प्रदेश।

बनाम

आम जनता

विषय :— प्रार्थना-पत्र जेर धारा 13 (3) जन्म एवं मृत्यु पंजीकरण अधिनियम, 1969.

श्री पृथी सिंह पुत्र श्री साली राम, निवासी झरेड ने इस अदालत में प्रार्थना-पत्र मय व्यान हल्फी दिया है कि उसकी माता श्रीमती जमना देवी की मृत्यु दिनांक 20-8-1991 को हुई है लेकिन उसकी मृत्यु तिथि ग्राम पंचायत के रिकार्ड में दर्ज नहीं है।

अतः इस इशतहार द्वारा आम जनता को सूचित किया जाता है कि यदि इस बारे किसी व्यक्ति को कोई उजर/एतराज हो तो वह दिनांक 27-8-2009 को प्रातः 10.00 बजे असालतन या वकालतन हाजिर होकर अपना एतराज पेश कर सकता है वाद मियाद अपील गुजरने कोई भी एतराज पेश न होगा।

आज दिनांक ..... को मेरे हस्ताक्षर व मोहर अदालत से जारी हुआ।

मोहर।

गौरव चौधरी,  
नायव तहसीलदार एवं कार्यकारी दण्डाधिकारी,  
शाहपुर, जिला कांगड़ा (हि0 प्र0)।

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ब अदालत श्री गौरव चौधरी, नायव तहसीलदार एवं कार्यकारी दण्डाधिकारी, शाहपुर, जिला कांगड़ा (हि0 प्र0)

श्री शमशेर सिंह पुत्र श्री बालक राम, निवासी भनाला, तहसील शाहपुर, जिला कांगड़ा, हिमाचल प्रदेश।

बनाम

आम जनता

दरखास्त बराये जेर धारा 13 (3) जन्म एवं मृत्यु पंजीकरण अधिनियम, 1969.

श्री शमशेर सिंह पुत्र श्री बालक राम, निवासी भनाला, तहसील शाहपुर ने इस कार्यालय में प्रार्थना-पत्र मय व्यान हल्फी दिया है कि उसकी लड़की नम्रता देवी का जन्म दिनांक 25-3-2004 को हुआ है जो ग्राम पंचायत के रिकार्ड में दर्ज नहीं है।

अतः इस इशतहार द्वारा आम जनता को सूचित किया जाता है कि यदि इस बारे किसी व्यक्ति को कोई उजर/एतराज हो तो वह दिनांक 27-8-2009 को प्रातः 10.00 बजे असातन या वकालतन हाजिर होकर अपना एतराज पेश कर सकता है वाद मियाद अपील गुजरने कोई भी उजर/एतराज काविले समायत न होगा तथा नम्रता देवी की जन्म तिथि 25-3-2004 के पंजीकरण आदेश कर दिये जायेंगे।

आज दिनांक ..... को मेरे हस्ताक्षर व मोहर अदालत से जारी हुआ।

मोहर।

गौरव चौधरी,  
नायव तहसीलदार एवं  
कार्यकारी दण्डाधिकारी,  
शाहपुर, जिला कांगड़ा (हि0 प्र0)।

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ब अदालत श्री गौरव चौधरी, कार्यकारी दण्डाधिकारी एवं नायव तहसीलदार, शाहपुर, जिला कांगड़ा (हि0 प्र0)

श्री शमशेर सिंह पुत्र श्री बालक राम, निवासी भनाला, तहसील शाहपुर, जिला कांगड़ा, हिमाचल प्रदेश।

बनाम

आम जनता

दरखास्त बराये जेर धारा 13 (3) जन्म एवं मृत्यु पंजीकरण अधिनियम, 1969.

श्री शमशेर सिंह पुत्र श्री बालक राम, निवासी भनाला ने इस कार्यालय में प्रार्थना-पत्र मय व्यान हल्फी दिया है कि उसकी लड़की सिम्रला देवी का जन्म दिनांक 8-5-2006 को हुआ है जो ग्राम पंचायत के रिकार्ड में दर्ज नहीं है।

अतः इस इशतहार द्वारा आम जनता को सूचित किया जाता है कि यदि इस बारे किसी व्यक्ति को कोई उजर/एतराज हो तो वह दिनांक 27-8-2009 को प्रातः 11.00 बजे असातन या वकालतन हाजिर होकर अपना एतराज पेश कर सकता है वाद मियाद अपील गुजरने कोई भी उजर/एतराज काविले समायत न होगा तथा सिम्रला देवी की जन्म तिथि 8-5-2006 के पंजीकरण आदेश कर दिये जायेंगे।

आज दिनांक ..... को मेरे हस्ताक्षर व मोहर अदालत से जारी हुआ।

मोहर।

गौरव चौधरी,  
कार्यकारी दण्डाधिकारी एवं  
नायव तहसीलदार, शाहपुर,  
जिला कांगड़ा (हि0 प्र0)।